TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 152

THE CITY OF DETROIT, WILLIAM C. MAYBURY, MAYOR, AND CHARLES FLOWERS, CORPORATION COUNSEL, APPELLANTS,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 4, 1900.

(17,897.)

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DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers, Defendants. } No. 3631.

Bill of Complaint.

And now, on this day—that is to say, on August 16, 1899—comes the complainant, The Detroit Citizens' Street Railway Company, by Brennan, Donnelly & Van De Mark, Henry M. Duffield, and Fred A. Baker, its solicitors and counsel, and files in said court a bill of complaint as commencement of suit, which bill is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

To the circuit court of the United States for the eastern district of Michigan, in equity:

Humbly complaining, your orator, The Detroit Citizens' Street Railway Company, respectfully represents unto this honorable court:

1. That it is a street railway corporation, organized as such under and by virtue of the provisions of chapter 95, Howell's Annotated Statutes of Michigan, which pr-vides for the incorporation of
4 street railway companies, and your orator was so incorporated on the — day of September, 1891, and is a citizen of the State of Michigan and a resident of the eastern district thereof; that by sections 13 and 14 and 20 of said chapter 95 of Howell's Statutes it is and was prior to the incorporation of your orator provided as follows:

"SEC. 13. Any street railway corporation organized under the provisions of this act, may with the consent of the corporate authorities, of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, in said city or village as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent, but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any

such company may extend, construct use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township.

"SEC. 14. After any city, village or township shall have consented as in this act provided in the construction and maintenance of any street railways therein or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company such township, city or village shall not revoke such consent nor deprive the company of the right and privileges so conferred.

"SEC. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such companies and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

2. That your orator shortly after the date of its incorporation and on or about the — day of September, 1891, acquired by purchase from certain street railway companies then owning the same
5 certain lines of street railway constructed and in operation in the city of Detroit, and especially the lines of street railway theretofore constructed or owned and operated by the Detroit City railway, and certain other lines of street railway owned and operated theretofore by the Grand River Street Railway Company, and that since the date of its purchases aforesaid it has continued to maintain and operate said lines of street railway up to the present time, and your orator is now engaged in the operation and maintenance of said various lines of street railway as the owner thereof.

3. That on the 24th day of November, 1862, the City of Detroit, a municipal corporation organized under a special charter granted by the legislature of the State of Michigan and residing in the eastern district thereof and being a citizen of said State (and whom your orator makes a defendant to this bill of complaint), through the common council, entered into a contract with Eben N. Willcox and his associates, successors, and assigns, by the terms and provisions of which, among other things, the said Willcox and his associates, successors and assigns, when organized into a corporation under the laws of the State of Michigan, were authorized, permitted, and empowered to construct, equip, maintain, and use single or double track railways, with all necessary and convenient tracks, turnouts, and switches, in, along, and through certain therein-named streets, avenues, and public places in the city of Detroit, and to operate thereon railway cars and carriages upon certain terms and conditions set forth in said contract; that said contract was
6 adopted by the common council in the form of an ordinance which was duly accepted by the grantee therein named, his successors and assigns; that said Willcox, his associates and

assigns, were duly organized into a corporation under the train or tram railway law, being chapter 94 of Howell's Annotated Statutes, by the name of the Detroit City railway, and said corporation duly accepted said ordinance and undertook to and did carry out and perform all the terms and conditions thereof; that said ordinance when accepted became a valid and bonding contract, by the terms of which the said Detroit City railway and its successors and assigns became entitled to own, construct, use, and operate street railways in the streets therein named, according to the terms of said grant or contract, with all the rights, privileges, and franchises thereby conferred and granted; that under and by virtue of the terms of said contract said Detroit City railway and its successors and assigns entered upon the streets of said city and constructed and put in operation thereon and has since maintained and operated certain lines of street railway, and especially on Jefferson, Woodward, Gratiot, — Michigan avenues, in said city; that under and by virtue of certain amendatory and supplementary grants thereafter made to said Detroit City railway by the said City of Detroit, extending the provisions of said contract to certain other streets and avenues in said city, the said Detroit City railway constructed and put in operation and ever since the construction thereof has maintained and operated certain other lines of street railway in said city, all of which were constructed and have been maintained and operated under said supplementary grants, — are lines of street railway on Brush, Trumbull, Chene, and East Fort streets, in all amounting to — miles of street, upon many of which the said Detroit City
7 railway, its successors and assigns, have from time to time constructed double tracks, changing the original roads from single to double track roads.

4. Among other things section 8 of said contracts and ordinance of November 24th, 1862, provided as follows:

"SEC. 8. The rate of fare for any distance shall not exceed five cents on any one car or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes, provided that cars so chartered shall not be considered regular cars within the meaning of the preceding section."

And by section 5 of said contract or ordinance it was provided that the routes of all of said railways should commence on Woodward avenue at the Campus Martius, from thence running on their several courses to the outer limits of the city; that for the purpose of collecting fares the limit on each of said avenues named, to wit, Jefferson, Gratiot, Michigan, and Woodward avenues, should each be considered a separate route; that by a subsequent grant under which the lines on Brush street and Trumbull avenue were constructed the same were maintained each as a separate route; that under and by virtue of said grant of November 24th, 1862, and the grant of the right to construct, maintain, and operate lines of railway on Brush street and Fort street east and Trumbull avenue the grantee thereof and your orator, its grantee and successors, became and *is* entitled to exact and collect from each passenger taking passage on any one of the routes named the full fare of five cents for a

single ride in any direction over any portion of the route on which he took passage, and such passenger was not entitled to have or receive from the grantee in consideration of his payment of said fare of five cents any transfer ticket or other contract or have the
8 right to a free ride over any one of the other routes of the grantee, nor was such passenger entitled to such free ride, nor was he entitled to ride over more than a portion of any one of said routes, and upon payment of his fare therefor to be transferred to or carried over any portion of any other route without the payment of additional fare; that besides the routes and lines last aforesaid named, to wit, Jefferson, Gratiot, Woodward, Michigan, and Trumbull avenues and Brush street, certain other lines and routes were granted to said Detroit City railway by the terms of a contract entered into between the said City of Detroit and said grantee, approved January 3rd, 1889, in the form of an ordinance duly accepted, by which the said grantee became entitled to construct, maintain, and operate lines of street railway in, along, and through Fort street east, Mack street, Chene street, and Cass avenue, in the city of Detroit, and to connect its lines on Michigan avenue with its line or route on Monroe and Gratiot avenues so that the cars might be brought through and over the same; that the said Detroit City railway, under and by virtue of said contract and grant, constructed and put in operation and the said Detroit City railway and its successors and assigns *has* since said date maintained lines of railway upon the routes therein named, except on Cass avenue, which has not yet been constructed, and the same are now maintained and operated by your orator; that section 4 of said contract and grant of January 3rd, 1889, provided as follows:

"SECTION 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit City railway, but the permission and authority hereby given shall be inoperative and void unless the said Detroit City railway shall file a written acceptance thereof within thirty days from
9 the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to wit:

"A. It shall carry passengers from its Cass Avenue and Third Street, Trumbull Avenue, Michigan Avenue and Congress and Baker Street lines to any point on the proposed line on Fort street east or the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east or from any point thereon, to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue, and Third Street lines for a single fare of five cents for one continuous trip.

"A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph, Campau, Atwater and Chene streets shall be entitled to be transferred at Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot and Michigan Avenue lines in

one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip.

"B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride over said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction over the Fort Street East Chene Street and Gratiot Avenue lines for a single fare of five cents for one continuous trip.

"C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

"D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning and between the hours of 5.15 and 6.15 o'clock in the afternoon over any of its lines in said city for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs A, B and C of this section.

"E. It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines and shall run the cars on the said Woodward Avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue."

5. That the provisions of said contract and grant of November 24th, 1862, as to the rates of fare which the grantee therein named and its successors and assigns should be entitled to exact and receive for the transportation of passengers were by the contract of January 3rd, 1889, of the parties modified only to the extent of providing that for certain hours in the day, to wit, from 5.30 to 7 o'clock in the forenoon and from 5.15 to 6.15 in the afternoon, a ticket sold at the rate of eight tickets for twenty-five cents or the payment of five cents at any time should be accepted in payment for one continuous trip, with the right of transfer from certain of the lines of street railway of the grantee therein named to certain other lines of street railway therein named belonging to the said grantee; which right of transfer entitled the party holding the same to a free ride upon the route or line to which he was transferred, but to no other route of the said grantee was a passenger paying his fare either on the basis of five cents or a ticket sold at the rate of eight tickets for twenty-five cents entitled to a free ride or transfer; that under the terms of said grant the rights of transfer were limited as follows: From Cass Avenue and Third Street, Trumbull Avenue and Congress and Baker Streets lines to the Fort Street

east line, and from the said Fort Street east line to Congress and Baker, Michigan Avenue, Trumbull Avenue, Cass Avenue and Third Street lines, and from the line of Chene street to Fort street east or to Gratiot avenue, and on such transfer to be carried to any point on the Gratiot and Michigan Avenue lines as one route; also from Chene Street line to the said Fort Street east line, and thence over the Fort Street east line to Belle Isle bridge, and thence in a reverse direction from the Fort Street line to the said Chene and Gratiot lines, and the further modification that the said
11 Michigan and Gratiot lines should be operated substantially as one route at a single rate of fare for one continuous trip.

6. That by a contract in the form of an ordinance entered into on May 1st, 1868, the said City of Detroit granted to Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, James P. Mansfield, and their associates, successors, and assigns, organized into a corporation under the laws of the State of Michigan, the right to construct, maintain, and operate a single or double tracked street railway, with all necessary and convenient tracks for turnouts, side tracks, and switches in, along, and through Woodward avenue from Jefferson avenue to Grand River avenue, and thence along Grand River avenue to where it is crossed by the tracks of the Michigan Southern and Detroit, Monroe and Toledo railroad; that afterwards the said parties were organized into a corporation known as the Grand River Street Railway Company under and by virtue of the provisions of chapter 94 of Howell's Annotated Statutes and duly accepted the said contract and grant, and under the terms thereof constructed and put in operation and the said company and its successors and assigns has ever since maintained in operation a line of street railway upon the streets therein named; that by section 6 of the said ordinance and contract the grantee therein named was authorized to charge five cents fare for the carriage of a passenger over its said route; that subsequently the grantee therein named was authorized under the provisions of said contract to construct and operate a line of street railway on Myrtle street from its intersection with Grand River avenue westerly to Mt. Hope avenue, and was thereby required to run its cars
12 from the westerly terminus of said Myrtle street over its line of Grand River and Woodward avenues to Jefferson avenue, and should be entitled to charge for the carriage of a passenger thereon five cents fare; that by contract entered into on the 3rd day of January, 1889, the said City of Detroit granted to the said Grand River Avenue Street Railway Company the right to construct, maintain, and operate a double-tracked street railway along and through the said Grand River avenue, so called, from its junction with Woodward avenue to the city limits, and also in, along, and through Crawford street from its junction with Grand River avenue to the Detroit & Bay City Railway crossing; also on Congress street east from its intersection with Woodward avenue to the easterly limits of the city of Detroit, all of which said additional lines were to be operated in connection with the then existing line of the said grant-

ees. By the terms of last-mentioned contract the said grantee became entitled to charge a fare of five cents for any one passenger for a continuous trip from any point on the line of Congress street east in a westerly direction to any point on any one of the lines on Grand River, Myrtle, or Crawford streets, or from any point on any one of the said lines to any other point on the line on which passage is taken or on any of the lines of said railway except between the hours of 5.30 o'clock to 7 o'clock in the forenoon and 5.15 and 6.15 o'clock in the afternoon, when — was required to carry passengers over the routes between the points above named for a ticket sold at the rate of eight tickets for twenty-five cents when tendered by a passenger; that subsequently your orator, by mesne conveyance, acquired all of the lines of street railway constructed on the streets named
13 in said grants and contracts, and acquired by such conveyances all the contract rights, franchises, rights, and privileges thereby conferred, and especially the right to operate the said lines of street railway, and to receive and exact the rates of fare fixed and agreed upon by the terms of said contracts, and your orator is now in the possession and ownership of the said contract rights, grants, privileges, and franchises and in the ownership, possession, and management of the said lines of street railway.

7. That the common council of the city of Detroit on the sixteenth day of August, 1899, passed and adopted an ordinance entitled "An ordinance to amend an ordinance of the city of Detroit approved December 3rd, 1885, entitled An ordinance extending the charter of the Grand River Street Railway Company and providing for the payment of the tax by said company by adding a new section thereto to stand as section 3*a*." A copy of said ordinance is hereto attached and marked Exhibit "C" and hereby made a part of this bill of complaint; that said ordinance was afterwards approved by the mayor of said city, and the City of Detroit claims and contends that the same is valid and is now in full force and effect; that by the terms thereof the said City of Detroit attempted to require that your orator, its successors and assigns, should keep on sale on its cars in service at all times on said lines of railway tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets should be accepted by your orator, its successors or assigns, for a single ride for any distance in either direction over the lines or routes operated by your
14 orator or its successors or assigns on the car on which it is presented, and a passenger presenting such ticket or upon payment of one single fare charged by your orator should be entitled to a transfer ticket, good for a free, continuous ride over any other line or route operated by your orator, if such ticket is presented for such ride on the next regular car of such other route within fifteen minutes after the passenger holding the same leaves the car on which he received such transfer ticket; that in and by said ordinance it was intended by the said City of Detroit to alter, amend, and lessen the rate of fare fixed by the terms of the original agreement, which up to that time had remained in full force and effect, for the carriage of passengers by the said Grand River

Street Railway Company and your orator, as its grantee and successor, without the consent or agreement or request of the said Grand River Street Railway Company or of your orator, and to require that your orator, as the now owner and operator of said lines of street railway, should not only transport a passenger taking passage upon a car on the routes of the said Grand River Street Railway Company at said reduced rate of fare, but also to transfer him at his request to any other line or route owned or operated by your orator and transport him thereon free of charge at the rate of fare which said City of Detroit, through its common council and mayor, undertook to fix by the said ordinance, Exhibit "C," without the consent or agreement thereto of your orator or the said Grand River Street Railway Company.

8. That on the 17th day of April, 1886, the common council of the city of Detroit, with the approval of the mayor of said
15 city, entered into a contract in the form of an ordinance with George Dorr, Samuel A. Plummer, Calvin K. Brandon, Bethune Duffield, their associates, successors, and assigns, organized into a corporation under the laws of the State of Michigan, by which the said City of Detroit granted to the said parties, organized into a corporation, the right to construct, maintain, and operate a line of street railway in, along, and through 24th street and Dix road from the intersection of 24th street and Baker street to the westerly city limits on Dix road. By section 6 of said contract the grantees were authorized to charge and entitled to receive a rate of fare of five cents for the carriage of a passenger for any distance over its said line of railroad within the city limits, and also to any point on the line of cars running on Congress and Baker streets, and upon the payment of a like fare a passenger was entitled to ride from any point upon the Congress and Baker Street line to any point on the said line of 24th street and Dix road; that said line of street railway was constructed and put in operation and has since been maintained and operated under and by virtue of the terms of said grant and contract, and the same is now in the possession and control and is being operated by your orator under the terms of said grant; that on the sixteenth day of August, 1899, the common council of the city of Detroit adopted an ordinance entitled An ordinance to amend an ordinance of the city of Detroit approved April 17th, 1886, entitled "An ordinance to permit certain persons to establish and locate a street-railway line along the following streets: Commencing at the intersection of Baker and 24th streets, thence along and through 24th street to the Dix road, and along said Dix road to the city limits, by adding a new section thereto, to stand as section 22*a*." A copy of
16 said ordinance is hereby attached and marked Exhibit "D" and hereby made a part of this bill of complaint, which said ordinance was afterwards approved by the mayor of the city of Detroit and is now claimed by said City of Detroit to be in full force and effect; that by the terms thereof the said City of Detroit sought to require your orator to keep on sale on its cars in service on said lines of railway at all times tickets, to be sold in strips or packages

of eight tickets for twenty-five cents, each of which tickets should be accepted by your orator or its successors and assigns for a single ride for any distance in either direction over the said line or route so operated by your orator, its successors and assigns, on any car on which it is presented, and a passenger presenting such ticket or upon payment of a single fare charged by your orator be entitled to a transfer for a continuous ride over any other line or route operated by your orator, if such ticket be presented on the next regular car of said other route within fifteen minutes after the passenger holding the same leaves the car on which he received it; that it was intended by said Exhibit "D," and without the consent or agreement of your orator, to reduce the rates of fare which by the terms of the contract heretofore set up the said Calvin K. Brandon and his associates organized into a corporation, and your orator, as successor and assignee thereof, was entitled to charge for and receive for the transportation of passengers over the said line or route, and to require that your orator, as successor of said original grantee in the control and operation of said line of railway, *to* carry such passenger at a less rate of fare than that fixed by the original contract, and in addition thereto to require your orator to carry
17 any passenger taking passage over or on the line of railway upon Dix avenue and 24th street to any other line or route owned or controlled and operated by your orator in the said city of Detroit for a single rate of fare fixed by the said Exhibit "D" and without the consent or agreement of your orator or of the original grantees to the same.

9. That on the 13th day of July, 1886, the common council of the city of Detroit, with the approval of the then mayor, entered into a contract in the form of an ordinance with the Highland Park Railway Company, its successors and assigns, by the terms of which the said Highland Park railway was granted the right to construct, maintain, and operate a single or double tracked street railway in, along, and through Woodward avenue from the northerly side of the Grand Trunk railroad crossing to the then northerly city limits. By section 5 of said contract the said Highland Park Railway Company was authorized and entitled to have, receive, and collect for the carriage of single passengers a fare of five cents, which would entitle such passenger to ride to any point on the line of your orator on Woodward avenue within the limits of the said city. That your orator is now in the possession of and engaged in the operation of the line of railway constructed under said grant and contract, as lessee, and is entitled to maintain and operate the same at the same rates of fare fixed by the said contract, Exhibit "E;" that upon the sixteenth day of August, 1899, the common council of the said city of Detroit, with the approval of the mayor, adopted an ordinance to amend an ordinance of the city of Detroit approved July 13th, 1886, entitled An ordinance to authorize the Highland Park Railway Company, its successors
18 and assigns, a body corporate, organized under the laws of the State of Michigan, to construct, maintain, and operate a railway on Woodward avenue between the railroad crossing and the

northerly city limited by adding a new section thereto, to stand as section 22*a*. A copy of said ordinance is hereto attached, marked Exhibit "E," and hereby made a part of this bill of complaint; that by the terms of said Exhibit "E" the said City of Detroit seeks and intends to require your orator — keep on sale on its cars in service on the line constructed by said Highland Park Railway Company tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets should be accepted by your orator and its successors and assigns for a single ride for any distance in either direction over said line of railway or over any of the lines or routes of railway owned or operated by your orator, and that a passenger presenting such ticket or upon payment of a single fare charged by your orator should be entitled to be transferred to and carried over any other line or route operated by your orator free of charge should the transfer ticket be presented by the person holding the same within fifteen minutes after the holder thereof should leave the car on which he received it; that the said City of Detroit in the adoption of said ordinance intended and attempted to reduce the rates of fare which your orator, as lessee of the said Highland Park Railway Company lines, was entitled to charge under and by virtue of the terms of the contract, Exhibit "E," and to require your orator to carry and transport passengers and transfer the same to its other lines at a rate of fare less than that fixed by said contract, Exhibit "E," without the consent or agreement of your orator to such reduction, change, or modification.

19 10. That your orator, by mesne conveyances and transfers and leases, has become the owner or lessee of all of the contract rights, franchises, and ordinance grants hereinabove recited and set forth and of the lines of street railway constructed, maintained, and operated thereunder, and as such owner or lessee is now maintaining and operating said lines of street railway under and by virtue of the terms of the said contracts, ordinance grants, and franchises, and is possessed of and has the right to the enjoyment of all of the rights, franchises, privileges, and franchises created and granted by the said various original contracts, ordinances, and ordinance grants, and whatever said rights, franchises, and grants may be, your orator is now in the full possession, ownership, and enjoyment thereof as the owner thereof.

11. That under and by virtue of the terms of said original contracts and ordinance grants your orator is entitled to have, receive, and exact for the carriage of passengers over the lines of street railway owned, leased, and operated by it a full fare of five cents for a single ride for a continuous trip in any one direction over any one of the routes laid out and described in the said contracts and ordinance grants, and is not required to give a transfer to any passenger paying such rate of fare to any other route or line and carry him on such other route or line free of charge except as the same has been modified by the terms of the agreement of January 3rd, 1889, to which reference has heretofore been made, and the terms of said various ordinances fixing and agreeing upon the rates of fare above

set forth have been duly accepted by your orator and its
20 grantors, became and are fixed by contract, and the right of your orator to charge and exact the rates of fare above set forth became a contract right of your orator, which it is entitled to have, hold, and maintain unrestricted and unimpaired and which the said City of Detroit has not the lawful right in any way or manner to impair or evade.

12. Your orator further shows that the said City of Detroit is a municipal corporation organized under a special charter granted by the legislature of this State; that whatever governmental powers it possesses it has received the same by virtue of direct and express grant from the State of Michigan, and it has and possesses no governmental legislative capacity except such as is granted by the terms of its charter and such authority as has been granted to it by statute to enter into agreements for the construction, maintenance, and operation of street railways in its streets by corporations or companies organized under chapters 94 and 95 of Howell's Annotated Statutes, hereinbefore referred to; that the grants heretofore made to your orator and its predecessors and the contract rights thereby created and conferred were made, created, and conferred by the said City of Detroit under and by virtue of the authority conferred upon it by the legislature of the State of Michigan by the provisions of said chapters 94 and 95 of Howell's Annotated Statutes, and in the making of said original contracts and grants and the fixing of the terms and conditions thereof, and especially in fixing the rates of fare which the grantees were entitled to have and receive for the carriage of passengers, the said City of Detroit exer-
21 cised the power delegated to it by the legislature and as the representative and agent of the State of Michigan.

13. Your orator further alleges that the grantors and lessors of your orator, each fully believing that it had by virtue of the said several contracts and ordinances the full power, right, and authority to charge and have and receive the rates of fare hereinbefore set forth and stated without reduction or impairment, and that the provisions of said contract with reference to said rates of fare were valid and binding and could not be altered, amended, or repealed by said City of Detroit, constructed the various lines of street railway hereinbefore set forth and put the same in operation, and the said companies, their successors and assigns, and your orator have continued to maintain and operate the same from thence hitherto in the full faith and belief that the rates of fare aforesaid were fixed and determined and could not be altered, amended, or repealed by the City of Detroit without the consent of the grantees, their successors or assigns, and in the construction, maintenance, and operation of said roads have expended large sums of money, all of which was well known to the said City of Detroit, its officers and agents, and it alleges that in law it is entitled to have and maintain said rates of fare without reduction, amendment, or interference by the said City of Detroit and to have the said contract and grant maintained unimpaired and in full force and effect.

14. Your orator further alleges that on the sixteenth day of

August, 1899, the said City of Detroit adopted in form and
22 manner as provided by the charter of said city an ordinance entitled "An ordinance to amend an ordinance of the city of Detroit approved November 14th, 1879, entitled 'An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate certain street railways in the city of Detroit, approved November 24th, 1862," and the amendments thereto, and for other purposes,'" by adding a new section to stand as section "6*a*," a copy of which ordinance is hereto attached and marked Exhibit "A" and hereby made a part of this bill of complaint; that by the terms of said ordinance, Exhibit "A," the said City of Detroit attempts, without the consent of your orator, to reduce the rates of fare which your orator in and by the terms of its contract with the said city is entitled to have and receive for the carriage of passengers, by requiring your orator to keep for sale on its cars in service at all times tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets should be accepted by your orator, its successors or assigns, in full payment for a single ride for any distance, in either direction, over the lines or routes operated by its successors or assigns on the car on which it is presented, and that a passenger presenting such ticket would be entitled to a transfer ticket good for a continuous ride over any other line or route operated by said company, if the same is presented for such ride on the next regular car on such route within fifteen minutes after such passenger leaves the car on which he received such transfer ticket, thereby attempting to deprive your orator of its right under the said contract grants to have and receive for the carriage of passengers the rate of fare fixed by said contract and grants, and to compel it to receive for the service which
23 it is required to render in the carriage of passengers the lower rate of fare fixed by said ordinance, Exhibit "A;" that said ordinance was duly approved by the mayor of said city, and is claimed by said City of Detroit to be now in full force and operation.

That on the sixteenth day of August, 1899, the common council of said city of Detroit also adopted a further and other ordinance entitled "An ordinance to require the Detroit Citizens' street railway, its successors and assigns, to keep on sale and to sell eight tickets for twenty-five cents and to give transfers to passengers from the lines of street railway operated by said company in the city of Detroit;" a copy of said ordinance is hereby attached, marked Exhibit "B," and hereby made a part of this bill of complaint; that by the terms of said Exhibit "B" the said City of Detroit undertook to require that your orator should keep on sale in its cars in service at all times on all lines operated by it tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets should be accepted by your orator, its successors and assigns, for a single ride for any distance, in either direction, over the line — route operated by your orator on any car on which it should be presented, and that any passenger presenting such ticket should be entitled to a transfer ticket good for a continuous ride over any

other line or route operated by your orator, if the same is presented on the next regular — of such other route within fifteen minutes after such passenger shall leave the car on which he received such transfer ticket; that said ordinance was duly approved by the mayor of said city, and is now claimed by said City of Detroit to be in
24 full force and operation; that your orator is now operating under a lease the lines of street railway constructed and owned by the Detroit, Fort Wayne & Belle Isle railway, which said lines were constructed by said company under the original contract and grant of January 31st, 1865, of like force and effect between the said City of Detroit and the predecessors and grantors of the said Detroit, Fort Wayne & Belle Isle railway, and by the terms of which the grantees therein named and their successors and assigns were entitled to charge the same rates of fare therein named and fixed, to wit, five cents for each single fare; that by the terms and provisions of said ordinance, Exhibit "B," the said City of Detroit undertook to change and reduce the rates of fare which your orator or its grantors and lessors would be entitled to charge over the route which it operates under its lease of the said Detroit, Fort Wayne & Belle Isle railway, as also the rates of fare which it would be entitled to charge over the lines and routes of railway owned and operated by it and the other lines and routes operated by it under lease without the consent of the said several grantees and companies or your orator, its lessee; that the said lines and routes so owned by the said Detroit, Fort Wayne and Belle Isle railway and so leased are not now and never have been a part of the system of your orator or operated in connection therewith or as a route thereof, but always have been and now are operated as a wholly separate and distinct system; that under and by virtue of its rights as lessee it is entitled to have and receive for the transportation of passengers over the said leased lines the rates of fare fixed by the terms of the various contracts and grants between the said City of Detroit and
25 the said Detroit, Fort Wayne and Belle Isle railway and its grantors and predecessors.

15. That neither your orator nor any of its grantors, predecessors, or lessors have agreed or consented to any change or modification in the terms of the said various grants and franchises fixing the rates of fare, nor have they or either of them ever consented to or accepted said ordinances, Exhibits A, B, C, D, and E, but, on the contrary, allege that the same were passed without their solicitation, approval, or consent.

16. That the contract privileges and grants so as aforesaid granted to and made with your orator's several grantors, assignors, and lessors have been validly extended for periods of which considerable portions have yet to run; and the same are now in full force and effect.

17. Your orator further alleges upon information and belief that the said City of Detroit in the enactment of the said ordinances, Exhibits A, B, C, D, and E and "B 2," hereto attached and made a part of this bill, assumed to enact the same in the exercise of legislative power claimed to have been conferred on it by the State of

Michigan by the charter of said city and by the terms and provisions of chapters 94 and 95 of Howell's Annotated Statutes of Michigan, permitting the construction, maintenance, and operation of street railways in the streets of said city.

18. Your orator further alleges that it is entitled, under and by virtue of the terms of the various contracts and grants hereinbefore stated, to charge the rates of fare fixed and agreed upon therein without the impairment or reduction by — without your orator's consent; that the ordinances Exhibit- A, B, C, D, and E impair the obligation of said contract and the rights of your orator thereunder, and are therefore void as being in contravention of section 10 of article I of the Constitution of the United States, in this, that they impair the obligation of the contracts hereinbefore recited and set forth, touching the rates of fare which your orator is entitled to have and receive for the carriage of passengers.

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19. Your orator further shows unto the court that as owner and lessee it is now engaged in the operation of upwards of one hundred and thirty-five miles of street railways in the streets of the city of Detroit; that in such operation it has in use upwards of four hundred street cars, which are propelled by electricity, and has in its employ, engaged in such operation, upwards of one thousand men as motormen and conductors; that it carries an average of — thousand passengers per day over the lines owned and operated by it; that under and by virtue of the provisions of said ordinances, Exhibits A, B, C, D, and E, and the obligation of your orator to carry such passengers as may offer themselves for carriage, it will be subjected to innumerable demands upon the part of the travelling public to sell to such persons as may make such demands tickets in accordance with the provisions of said ordinances, Exhibits A, B, C, D, and E, and to issue as provided and required thereby, and to accept and carry such passengers and transfer the same at the rates of fare fixed by said ordinances; that on your orator's refusal to comply with such demands and requests your orator may be subjected to numerous actions at law by persons so refused and to annoyance, litigation, and loss by reason thereof; that the said City of Detroit will seek and now seeks and threatens and intends by such power and authority as it may possess and by vexatious legal proceedings to compel your orator to comply with the provisions of said ordinances, Exhibits A, B, C, D, and E, and as a result your orator will be put to great loss, damage, hindrance, and annoyance in the transaction of its business, which it is entitled to carry on without such suits, litigation, actions, annoyance, hindrance, loss, and damage.

27

20. That, in full reliance upon its right to charge the full rates of fare fixed by the various contracts and grants hereinbefore referred to and for the purpose of procuring such money as it was necessary that it should have for the construction, maintenance, repairing, and reconstruction and operation of the various lines of railway hereinbefore described, it issued its bonds and borrowed thereon the money so needed; that your orator and its predecessors and lessors

have issued for the purposes aforesaid bonds amounting in the aggregate to eight millions two hundred thousand dollars, payable in gold coin, with semi-annual interest at the rate of five per cent. per annum; that many of said bonds mature and will be due and payable within the next three years, and it will be necessary for your orator to borrow a considerable amount of money to assist in the payment and retirement of said bonds, by the issue of bonds of the same character; that all of said bonds outstanding are secured by mortgages given at various dates, by
28 the terms of which all of the property, rights, privileges, and franchises of your orator, its lessors and predecessors, including the franchises or rights fixed by the said various contracts and grants to charge the rates of fare therein named, together with all the tolls, fares, issues, earnings, and profits arising therefrom, have been mortgaged to trustees therein named for the use and benefit and security of the holders of such bonds; that said bonds have been sold to parties purchasing the same in the full faith and belief that your orator, its lessor- and predecessors and grantors, had the right to charge the full rates of fare fixed by the various contracts and grants without any right upon the part of said City of Detroit or of any other person, corporation, or authority to interfere with, lessen, reduce, or impair the same, and, the said right to have and receive the rates of fare so fixed being so mortgaged as a part of the security for the payment of said bonded indebte ness, the action of said city by the adoption of the ordinances, Exhibits "A" and "B," is an impairment of the obligation of said contract as against the rights of said bondholders under and by virtue of the security created by said various mortgages and in contravention of said section 10 of article 1 of the Constitution of the United States.

And your orator further shows that the said City of Detroit attempts and intends under said several ordinances of August 16th, 1899, not only to illegally reduce the fare which your orator now is entitled to and does receive under its said several grants and contracts with said city, but also to impose illegal transfers upon your orator, and thereby to compel your orator to carry many persons
29 long distances on all lines or routes of street railway operated by it without receiving any consideration therefor, contrary to the terms of its grants, contracts, privileges, and franchises, all of which matters and things your orator charges are against the just rights of your orator and contrary to equity and good conscience and the constitutional right of your orator to the unimpaired enjoyment of its said several grants, contracts, franchises, and privileges.

Your orator further shows that the said City of Detroit is a citizen of the State of Michigan and a resident of the eastern district and southern division thereof, and that William C. Maybury is the mayor of said city, and is a citizen of the State of Michigan and a resident of the eastern district and southern division thereof, and that Charles Flowers is the corporation counsel of the said city of

Detroit and a citizen of the State of Michigan and a resident of the eastern district, southern division thereof, and that it makes the said City of Detroit, William C. Maybury, and Charles Flowers defendants to this its bill of complaint.

Your orator further alleges that the matter in dispute between the parties in this suit exceeds the sum of ten thousand dollars, exclusive of interest and costs, and arises under the Constitution of the United States.

Forasmuch, therefore, as your orator is not relievable in the premises by the strict rules of law, and to the end that your orator may have adequate and proper relief in the premises, your orator prays your honors that the said pretended ordinances of August 16th, 1899, and each and every of them be declared to impair the obligations of said grants, contracts, rights, and privileges of your
30 orator, contrary to the provisions of article I, section 10, of the Constitution of the United States, and therefore to be wholly and utterly null and void and of no force and effect, and that the said City of Detroit, its common council, its corporation counsel, and each and every of its officers, agents, counselors, and attorneys be perpetually restrained and enjoined from in any manner whatsoever, either by means of suits or actions or otherwise, enforcing or attempting to enforce or carry out the provisions of said pretended ordinance, of August 11th, 1899, or either of them or of any of the provisions therein.

And that in the meantime and until the further order of this court the said City of Detroit and its corporation counsel and other counsellors, agents, and attorneys, and each and every of them be restrained and enjoined as above prayed, and that your orator may have such other and further relief in the premises as to your honors may seem just and agreeable to equity and good conscience.

May it please the court to grant unto your orator the writ of subpœna to be directed to the said City of Detroit, William C. Maybury, the mayor thereof; Charles Flowers, its corporation counsel, commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before this honorable court, then and there to answer all and singular the premises and to stand to and abide by such order and decree therein as to the court will seem meet.

And may it please the court to grant unto your orator the people's writ of injunction to be directed to the said City of Detroit, William C. Maybury, its mayor; and Charles Flowers, the corporation
31 counsel thereof, restraining and enjoining them and each of them and all and each of its and their solicitors, attorneys, counsellors, agents, and servants from in any manner whatever, either by means of suits or otherwise, enforcing or attempting to enforce or carry out the provisions of all or any of said pretended

ordinances of August 11th, 1899, or any or either of them or any portion of them until the further order of said court.

And your orator will ever pray, etc.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
By ALBERT E. PETERS, *Secretary.*

[SEAL.]

Attest: ALBERT E. PETERS, *Secretary.*

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.
HENRY H. DUFFIELD,
FRED A. BAKER, *Of Counsel.*

STATE OF MICHIGAN, } ss:
Eastern District of Michigan, County of Wayne, }

On this sixteenth day of August, A. D. 1899, before me, a notary public in and for said county, personally appeared Albert E. Peters and made oath that he is the secretary of the complainant in the foregoing bill of complaint, and has authority to file said bill and commence and prosecute said cause on its behalf, and that he has read said bill of complaint and know the contents of the same; that he has information as to all the matters stated in said bill and from such information believes such matters to be truly stated
32 therein and that such bill is true; that all matters in said bill stated positively and not on information or belief are true to his knowledge, and that all matters therein stated on information or belief he is informed and believes are true.

ALEXANDER MUNRO,
Notary Public, Wayne County, Michigan.

EXHIBIT "A."

An ordinance to amend an ordinance of the city of Detroit, approved November 14, 1879, entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes," by adding a new section thereto to stand as section 6*a*.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the ordinance of said city, approved November 14, 1879, entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes," be, and the same is hereby amended by adding thereto a new section to stand as section 6*a*, and read as follows:

SECTION 6*a*. That the Detroit Citizens' Street Railway Company, its

successors and assigns, shall keep on sale on its cars in service
33 at all times tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns for a single ride for any distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket.

This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

EXHIBIT "B 2."

An ordinance to amend an ordinance of the city of Detroit, approved June 30, 1880, entitled "An ordinance supplementary to an ordinance passed January 31, 1865, entitled 'An ordinance to permit certain persons to establish and locate a street railway in and through certain streets of the city of Detroit,' and the amendments thereto, and for other purposes," by adding a new section thereto, to stand as section 4*a*.

34 It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the ordinance of said city, approved June 30, 1880, entitled "An ordinance supplementary to an ordinance passed January 31, 1865, entiled 'An ordinance to permit certain persons to establish and locate a street railway in and through certain streets of the city of Detroit,' and the amendments thereto, and for other purposes," be, and the same is hereby amended by adding thereto a new section to stand as section 4*a*, and read as follows:

SECTION 4*a*. That the street railway company, operating said road, its successors and assigns, shall keep on sale on its cars in service, at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket.

This ordinance shall not be construed to affect in any manner the

line or lines of street railway owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

35 EXHIBIT C.

An ordinance to amend an ordinance of the city of Detroit, approved December 3, 1885, entitled "An ordinance extending the charter of the Grand River Street Railway Company and providing for the payment of a tax by said company," by adding a new section thereto to stand as section 3*a*.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the ordinance of said city, approved December 3, 1885, entitled, "An ordinance extending the charter of the Grand River Street Railway Company and providing for the payment of a tax by said company," be, and the same is hereby, amended by adding thereto a new section to stand as section 3*a*, and read as follows:

SEC. 3*a*. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service, at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket.

36 This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

EXHIBIT "D."

Read twice by title, ordered printed, and laid on the table.

An ordinance to amend an ordinance of the city of Detroit, approved April 17, 1886, entitled "An ordinance to permit certain persons to establish and locate a street railway in and along the following streets: Commencing at the intersection of Baker and Twenty-fourth streets, thence along and through Twenty-fourth street to the Dix road, and along said Dix road to the city limits," by adding a new section thereto, to stand as section 22*a*.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the ordinance of said city, approved April 17,

1886, entitled "An ordinance to permit certain persons to establish and locate a street railway in and along the following streets: Commencing at the intersection of Baker and Twenty-fourth streets, thence along and through Twenty-fourth street to the Dix road, and along said Dix road to the city limits," be, and the same is hereby, amended by adding thereto a new section, to stand as section 22*a*, and read as follows:

37 SEC. 22*a*. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service, at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket.

This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

EXHIBIT "E."

An ordinance to amend an ordinance of the city of Detroit, approved July 13, 1886, entitled "An ordinance to authorize the Highland Park Railway Company, its successors and assigns, a body corporate organized under the laws of the State of

38 Michigan, to construct, maintain, and operate a railway on Woodward avenue between the railroad crossing and the northern city limits," by adding a new section thereto to stand as section 20*a*.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the ordinance of said city approved July 13, 1886, entitled "An ordinance to authorize the Highland Park Railway Company, its successors and assigns, a body corporate, organized under the laws of the State of Michigan, to construct, maintain and operate a railway on Woodward avenue, between the railroad crossing and the northern city limits," be, and the same is hereby amended by adding thereto a new section to stand as section 20*a*, and read as follows:

SECTION 20*a*. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service, at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any

distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket.

This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

EXHIBIT "B."

An ordinance to require the Detroit Citizens' Street Railway Company, its successors and assigns, to keep on sale and to sell eight (8) tickets for twenty-five cents (25c.), and give transfers to passengers upon the lines of street railway operated by the said company in the city of Detroit.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service at all times, tickets to be sold in strips or packages of eight (8) tickets for twenty-five cents (25c.); each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction, over the lines or routes operated by the said railway company, its successors or assigns, on a car on which it is presented; and any passenger presenting such ticket or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route operated by said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen (15) minutes after such passenger leaves the car on which he received such transfer ticket. This ordinance shall not be construed to affect any lines or routes of street railways now owned by the Detroit Railway Company.

SEC. 2. This ordinance shall take immediate effect.

Security for Costs.

Afterwards, to wit, and now, on this day—that is to say, on Aug. 16, 1899—comes the said complainant, by its said solicitor, and files in said court security for costs in said case; which security for costs is in words and figures following, to wit:

We hereby become security for all costs for which the complainant may become liable in within cause.

JOHN C. DONNELLY.
J. C. HUTCHINS.

16th August, 1899.

41 *Subpœna.*

Afterwards, to wit, and now, on this day—that is to say, on August 16, 1899—a writ of subpœna was duly issued out of and under the seal of said court; which writ of subpœ-, with due proof of service thereof, was returned and filed August 25, 1899, in words and figures following, to wit:

Circuit Court of the United States of America for the Sixth Circuit and Eastern District of Michigan, Southern Division, Sitting in Chancery.

The President of the United States of America to the City of Detroit, William C. Maybury, mayor; Charles F. [SUBPŒNA SEAL.] Flowers, corporation counsel, citizens of the State and residents of the eastern district of Michigan & southern division thereof:

You are hereby commanded to be and appear in the circuit court of the United States of America for the sixth circuit and eastern district of Michigan, sitting in chancery, before the judges thereof, at the district court room, in the city of Detroit, on the first Monday of October next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendants by Detroit Citizens' Street Railway Company as complainant; and this you shall in nowise omit under the penalty of one thousand dollars.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this sixteenth day of August, in the year of our Lord one thousand eight hundred and ninety-nine, and
42 of the Independence of the United States the one hundred and twenty-fourth.

WALTER S. HARSHA, *Clerk*,
By ADELAIDE ANDERSON VOORHEIS,
Deputy Clerk.

MEMORANDUM.—The above-named defendants are required to enter their appearance in this suit with the clerk of this court, at his office, in the city of Detroit, on or before the day on which this writ of subpœna is returnable; otherwise the bill of complaint in this cause will be taken *pro confesso* against said defendant.

WALTER S. HARSHA, *Clerk*,
By ADELAIDE ANDERSON VOORHEIS,
Deputy Clerk.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the seventeenth day of August, A. D. 1899, I served the within writ on The City of Detroit, William C. Maybury, mayor, and Charles Flowers, corporation counsel, defendants within named, at Detroit, in said district, by delivering to each personally a true copy thereof, also exhibiting this writ with the seal of the court impressed thereon, service upon the City of Detroit

being made by delivering to Howard Beck personally a true copy thereof, also exhibiting this writ with the seal of the court impressed thereon, said copies having like memorandum appended thereto as is hereto appended.

WM. R. BATES,
U. S. Marshal,
By C. P. TAYLOR, *Deputy.*

43 *Restraining Order.*

And afterwards, to wit, and now, on this day—that is to say, on August 16th, 1899—the court granted a restraining order in said cause, a memorandum of which was duly entered by the clerk in the journal of the proceedings of said court; which memorandum is in words and figures following, to wit:

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the sixteenth day of August, in the year one thousand eight hundred and ninety-nine.

Present: The Hon. Henry H. Swan, district judge.

THE DETROIT CITIZENS' STREET RAILWAY Company, a Corporation, etc., *v.* THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers. } In Equity. No. 3631.

Whereas in the above-named cause it has been made to appear upon the bill of complaint filed herein and the exhibits annexed thereto that a writ of injunction preliminary to the final hearing is proper, and that *prima facie* the complainant is entitled thereto to enjoin the defendants therein from the acts complained of and threatened to be committed:

44 Now, on motion of said complainant, it is ordered that the defendants appear before the circuit court of the United States for the eastern district of Michigan, in the sixth circuit, at the court-room of said court, at Detroit, upon the fourth day of September, 1899, at 10 o'clock a. m. of said day, and then and there show cause, if any they have, why the preliminary injunction therein prayed should issue; and it appearing to the undersigned that there is danger of irreparable injury being caused to the complainant before the hearing of said application for the preliminary writ of injunction can be heard unless the said defendants are, pending such hearing, restrained as hereinafter set forth, therefore complainant's application for such restraining order is granted.

Now, therefore, it is ordered that you, the said The City of Detroit, William C. Maybury, and Charles Flowers, defendants herein, your agents, servants, and attorneys and all persons acting by or under your authority or direction, be, and you are hereby, specially restrained and enjoined from in any manner whatever, either by

means of suits or actions or otherwise, enforcing or attempting to enforce or carry out the provisions of all or any of certain pretended ordinances of the common council of the city of Detroit of August sixteenth, 1899, referred to in the bill of complaint in this cause, copies whereof are annexed thereto, or any or either of them or any portion of them until the further order of said court.

This order is granted in the absence from said district and circuit of the circuit justice of the court and the judges of the circuit
45 court of appeals, and the complainant therefore has not had a reasonable time to apply to the circuit court for the writ.

It is further ordered that a copy of this order, certified under the hand of the clerk and the seal of this court, together with a copy of the bill of complaint herein, be served on each of the defendants to be restrained thereby.

Dated at Detroit, in the eastern district of Michigan, this sixteenth day of August, 1899.

Præcipe for Appearance.

Afterwards, to wit, and now, on this day—that is to say, on August 17, 1899—come the defendants, The City of Detroit, William C. Maybury, and Charles Flowers, by their solicitor, Charles Flowers, and file in said court a præcipe for appearance of said defendants; which præcipe is in words and figure following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers. } No. 3631.

46 To the clerk:

Let the appearance of the defendants, The City of Detroit, William C. Maybury, and Charles Flowers, be entered herein, together with the usual order requiring service of a copy of the bill, etc.

August 17th, 1899.

CHARLES FLOWERS,
Solicitor for Defendants, The City of Detroit and Charles Flowers and William C. Maybury.

1006 Majestic bldg., Detroit, Mich.

Entry of Appearance.

Afterwards, to wit, and now, on this day—that is to say, on August 17, 1899—the appearance of said defendants was duly entered by the clerk in the chancery order book kept in his office; which entry is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

THE DETROIT CITIZENS' STREET RAILway Company
v.
THE CITY OF DETROIT, WILLIAM C. Maybury, and Charles Flowers.
} No. 3631. Aug. 17, 1899.

47 On filing præcipe in this cause, and on motion of Charles Flowers, Esq., solicitor for defendants, it is ordered that the appearance of said defendants be, and the same is hereby, entered herein; and, on like motion, it is further ordered that the complainant or its solicitors deliver a copy of the bill of complaint to the solicitor for said defendants within twenty (20) days after service of notice of this order, and that in default thereof that said bill be dismissed, with costs, as to said defendants.

WALTER S. HARSHA, *Clerk.*

Proof of Service of Bill, Notice for Injunction, and Restraining Order.

Afterwards, to wit, and now, on this day—that is to say, on August 25, 1899—a proof of service of the bill of complaint, notice of injunction, and restraining order was filed by the marshal; which proof of service is in words and figures following, to wit:

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the seventeenth day of August, A. D. 1899, I served the within bill of complaint, notice for injunction, and temporary restraining order on The City of Detroit,
48 William C. Maybury, mayor, and Charles Flowers, corporation counsel, defendants within named, at Detroit, in said district, by delivering to each personally a true copy thereof, also exhibiting the seal of the court impressed thereon, service upon the City of Detroit being made by delivering to Howard Beck personally true copies thereof, with the seal of the court impressed thereon.

WM. R. BATES, *Marshal,*
By C. P. TAYLOR, *Deputy.*

Answer to Order to Show Cause why Preliminary Injunction Should not Issue.

Afterwards, to wit, and now, on this day—that is to say, on September 4, 1899—come the said defendants, by their said solicitor, and file in said court their answer to order to show cause; which answer is in words and figures following, to wit:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, a Corporation, Complainant,
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers, Defendants. } No. 3631.

In obedience to the order heretofore, on the 16th day of August, A. D. 1899, made and entered therein requiring said defend-
49 ants to show cause, if any, why the preliminary injunction therein prayed should not issue, for cause therefor these defendants submit the affidavit of Charles Engelhard, together with the copies of the ordinances of said city of Detroit annexed thereto and made a part thereof.

CHARLES FLOWERS,
Solicitor for Defendants.

T. E. TARSNEY, *Of Counsel.*

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, a Corporation, Complainant,
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers, Defendants. } No. 3631.

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

Charles Engelhard, being duly sworn, deposes and says that Exhibit "A," which is hereto annexed and made a part hereof, contains a true and complete copy of all of the ordinances heretofore made and passed by the common council of said city of Detroit in
50 relation to the several street railway companies named therein, except the ordinance of said city approved August 16, 1899, which said last-named ordinance is fully stated and set forth in the bill of complaint filed herein.

And further says not.

CHARLES ENGELHARD.

Subscribed and sworn to before me this 1st day of September, A. D. 1899.

NELLIE GAHAGAN,
Notary Public in and for Wayne County, Michigan.

EXHIBIT "A."

"An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit," approved November 24th, 1862, and the amendments thereto.

Whereas, Cornelius S. Bushnell, Nehemiah D. Sperry, Eben N. Wilcox, their associates, successors and assigns, propose to organize as a body politic and corporate under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 13, 1855 (Laws of 1855, p. 338), an act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the city of Detroit, city or street railways; therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in Eben N. Wilcox and his
51 associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and described, and in the manner and upon the condition set forth in this ordinance. (As amended December 27, 1862.)

SECTION 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River, and Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street, to the western limits of the city; and through such other streets and avenues in said city, as may, from time to time, be fixed and determined by the vote of the common council of the said city of Detroit, and assented to, in writing by said corporation, organized as provided in section first of this ordinance: And provided, the corporation does not assent in writing, within thirty days after the passage of said resolution of the council, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense:
52 Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue, shall each run into and connect with the Woodward Avenue railways, in such direction that said railways shall be continued down to, and form each of them, one continuous route to Jefferson avenue: Provided, always, that said railroad down Gratiot street may be continued to Woodward

avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863.)

SECTION 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and so as to accommodate the most common width of carriage wheels: Provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first: And provided further, that in all streets which are not paved or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of said railway, and place cars thereon for public use, they may, at any time thereafter, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, the consent of the common council is first obtained. (As amended
53 January 11, 1875.)

SECTION 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets or parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, and their assigns, shall be required to keep the surface of the streets, inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt, filth, cleared and removed from the same at the expense of the grantees: Provided, however, that upon the paved portions of said streets the materials for repairing shall be supplied at the expense of the city. (As amended January 12, 1863.)

SECTION 5. The routes of all said railways shall commence in the Woodward Avenue road, at Campus Martius; from thence running on their several courses to the outer limits of the city: Provided, that in collecting fare, those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being travelled continuously by any one passenger at
54 the same time, shall pay only one fare. (As amended January 12, 1863.)

SECTION 6. Said railway on Woodward avenue, or Witherell street, to Park lot sixty-two, through Jefferson avenue to the eastern limits, and through Jefferson avenue to Woodbridge, through Woodbridge to Third, and up Third to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapoton farm, shall be completed within three years from and after the 31st day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm; through Michigan avenue to Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require: Provided, that no such railway shall be required to be laid through any part of such routes, which shall not be worked up to the established grade thereof, until the city shall have completed such work.

SECTION 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe: Provided, always, that said common council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railways
55 shall be run for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

SECTION 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

SECTION 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 10. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SECTION 11. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 12. The grantees, or their assigns, shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers, to keep vigilent watch for all trains, carriages or persons on foot, and especially children, either
56 upon the track or moving towards it; at the first appearance ofdanger to such teams, carriages, footmen or children, or

other obstructions, the cars shall be stopped in the shortest time and space possible.

SECTION 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SECTION 14. Conductors shall announce to the passengers the names of the principal squares and streets, as the cars reach them.

SECTION 15. The cars shall, at all times, be entitled to the track, and any vehicle upon the track of said railways shall turn out when any car comes up, so as to leave the track *on*obstructed, and the drivers of any vehicle refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of said city of Detroit, and costs of prosecution shall not be at the expense of the city.

SECTION 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front, and a green light in the rear.

SECTION 17. Wherever gas, or water pipes or sewers are now laid in the streets herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the gas company and the board of public works, to take up or remove said pipes or sewers, in such manner as not unnecessarily to damage or injure said railways or their use, without claim against the city, gas company, or board of public works; and the common council expressly reserves to
57 itself the right hereafter to lay down, or permit to be laid down, and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

SECTION 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted, shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the council does not extend the time: Provided, that if said grantees are delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance or by the contrivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance. (As amended December 27, 1862.)

SECTION 19. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public in relation to said railways.

SECTION 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

58 SECTION 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes, bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete, on or before the first day of October, A. D. 1863; and if the said railways shall not then be completed, the sum so deposited shall be forfeited to the city: Provided, however, that if said grantees or their assigns, cannot procure the requisite amount of rail of the Philadelphia, or other suitable pattern, to build said railways, within the time specified with a suitable and competent force, then the time shall be extended until such rail shall be obtained, and laid with a suitable and competent force: And provided further, that the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rail cannot be procured. (As amended January 12, 1863.)

SECTION 22. The said grantees, and their assigns, shall pay to the treasurer of the city of Detroit, annually fifteen dollars on each and every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license for the use of the city, after the term of five years from and after this date.

SECTION 23. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and
59 conferred to and upon them, by this ordinance, shall be given, granted and duly vested in said corporation, without any further action, consent, permission or authority of the common council whatever.

SECTION 24. All ordinances, or parts of ordinances heretofore made, ordained and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

SECTION 25. Any wilful violation of, or failure to comply with the provisions of this ordinance, by said railway company, or by any agent, conductor, driver, or any person in the employ of said company, shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs, the court may make a further sentence that the offender be committed to the county jail or to the Detroit house of correction, until the payment thereof, for any period of time not exceeding six months. (As amended March 29, 1864.)

The following amendments and additional sections to the above ordinance were approved August 19, 1863:

SECTION 26. Permission is hereby given the Detroit railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michi-

gan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section twenty-one of said ordinance).

60 SECTION 27. As a condition of the acceptance of this permission, the said Detroit City railway may, and shall complete its road and track on Fort street, Michigan avenue, and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864; and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

SECTION 28. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said tracks and said plank road; and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the "T" rail, which is used for street railways, and weighs not less than thirty-three pounds to the yard.

SECTION 29. The said railway is hereby authorized to extend its track, and run its cars, through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railway Company.

SECTION 30. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue and Gratiot street, shall each be considered and run as one route, and subject its passengers to the payment of a single fare each: Provided, however, that all cars running north from Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue, shall be con-

61 sidered as making a portion of each of said routes respectively.

SECTION 31. The Detroit City railway, upon obtaining the consent of the owners of real estate on Elmwood avenue or such real-estate owners as are affected thereby, may, and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood cemetery, and run its cars thereon at such times as will accommodate the public: Provided, however, no person shall be charged more than one cent either way upon this track, and said railway are also authorized to run a track and their cars to Mount Elliott cemetery, along Mount Elliott avenue, and charge the same rate of fare as to the Elmwood cemetery.

SECTION 32. The Detroit City railway is hereby authorized to build its tracks and run its cars, from its track on Jefferson avenue, upon and along Randolph street southerly to Atwater street, and thence along Atwater street easterly to Brush street; and, as said track approaches the Detroit and Milwaukee depot, the said railway may turn the same on to the southerly side of said Atwater street so as to run said cars up to the sidewalk in front of the buildings of the

Detroit and Milwaukee Railway Company. (Approved October 7, 1863.)

The following amendments and additional sections to the foregoing ordinances were approved January 4, 1864.

SECTION 33. Permission is hereby given to the Detroit City railway to build its road and track on and through Fort street from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the
62 tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street, as aforesaid.

SECTION 34. Permission is also hereby given to said railway to build its track and road along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city; and such building shall relieve said railway of its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street, from the railroad crossing, through Stanton street and River road, to the city limits, with "T" rail, similar and of equal weight to that used on Michigan avenue.

SECTION 35. The road and track of said railway, from said western limits, through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

SECTION 36. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track, by constructing a branch track from their main track to said car-house, either through Second street or from Third street, through the alley between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St. Antoine street with their tracks on Jefferson avenue, by constructing a branch track from St. Antoine street to said car depot and stables;
63 such branch track to be a single track only, and to intersect said Jefferson Avenue track at right angles and by means of turn-tables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenue. (As amended December 15, 1874.)

SECTION 37. The time for completing the road of said company on Gratiot street, is hereby extended to November 1, 1865; provided, however, that said company shall extend their track as far as Chene street, on or before the 20th day of November next. (Approved October 8, 1864.)

SECTION 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the plank road company, in such position as shall be agreed upon between the railway and plank road companies: Provided, however, that unless the line agreed on shall be along the center of said street, such agreement

shall be first reported to and approved by the council. (Approved October 8, 1864.)

SECTION 39. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue, in accordance with the provisions of the ordinance above referred to, being section 3 of this chapter. (Approved January 11, 1875.)

SECTION 40. Permission, consent, and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and throughout Jefferson avenue, in the city of Detroit: Provided, expressly, that if hereafter the pavement on said avenue shall be extended, or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council. (Approved July 8, 1873.)

The following amendments and additional sections to the foregoing ordinances were approved August 20, 1877:

SECTION 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second, and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the city of Detroit. It is, however, expressly understood and provided: That, as said avenue has already been ordered paved or repaved, the said grantee or company shall or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave, or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of said tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair; and the two inner rails of its said tracks shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

SECTION 42. Any provision of condition in the ordinance creating

said company, or of any ordinance amendatory thereof, contravening the provisions of the foregoing section, are hereby repealed.

Additional Right of Way.

The following amendatory ordinance was approved November 14, 1879:

"An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes."

SECTION 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street, within sixty days from this date; and from Chene street to the city limits within
66 such period as the common council shall by resolution hereafter declare to be necessary.

SECTION 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue, from its present terminus on Jefferson avenue, to Atwater street; thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot. And the line on Congress street, heretofore operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus, through Randolph street to Atwater street, which extensions are hereby declared to be additional routes, for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the City Railway Company, consent and authority is hereby given.

SECTION 3. The ordinances of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit & Grand Trunk Junction Street Railway Company, and to the Central Market, Cass Avenue and Third Street Railway Company, authority to construct and operate street railways through certain streets of the city of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting the Detroit City Railway Company certain rights therein set forth.

SECTION 4. On the 1st of July and January in each half year, from the 1st of January, 1860, the Detroit City Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance on the gross receipts
67 of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts. On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by said company shall run, shall be hereafter *be* ordered to be paved,

repaved or repaired, said company shall furnish all materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their railway or track, and the spaces between the lines of double tracks and all switches, said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobblestone or some similar durable and proper material to be approved by the common council.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order.

SECTION 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company, by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily, on such
68 occasions as the common council may, by resolution, from time to time designate, to accommodate public processions or any other like convenience.

SECTION 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the city clerk of Detroit by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company, and the Central Market, Cass Avenue and Third Street Railway Company, or their successors; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

SECTION 7. The right to amend or repeal this ordinance, in case of its violation by said company or companies, is expressly reserved.

Right of Way in Farrar Street.

The following additional ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council December 11, 1880:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway
69 Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable half-switch, on Farrar street, in the city of Detroit, from a point ten feet north of the north line of Bates street, extended to Monroe

avenue, and so as to connect with the track of said company on said avenue.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Double Track on Griswold Street.

The following ordinance applying to and governing the Detroit City Railway Company, was approved by the common council July 8, 1882:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Griswold street, from State street to Larned street, and so as to connect at said streets with the present main track on said Griswold street: Provided, that the inside rails shall be laid not more than four feet apart.

SECTION 2. This ordinance shall take effect when the said
70 railway company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Double Track to Michigan Central Depot.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council March 29, 1884:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Woodbridge street from the present terminus of its double-track line near Second street westward to the east line of Third street, and so as to connect with the main track on said street in the form of a Y, and to remove the present track across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street, thirty feet west of the west line of Third street.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Additional Track on Campus Martius.

71 The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council July 21, 1884:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City railway is hereby authorized and permitted to lay, construct, use and operate an additional track through the Campus Martius of said city, extending from the present termination of the double track of said company, near the northerly line of said Campus Martius, southerly to the north line of Fort street, extended so as to form one continuous track for said company across the Campus Martius: Provided, that the inside rails shall be laid not more than four feet apart.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Brush Street Line.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council January 5, 1885:

SECTION 1. Subject to all the provisions and the requirements of chapter 50, of the Revised Ordinances of 1878, of the amend-
72 ments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate certain street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to maintain, keep and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinance, viz: Commencing at a point on Ferry street, adjacent to the Detroit & Milwaukee junction, running thence along Ferry street to Russell street, thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue, and thence over the present track of the Detroit City Railway Company on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

SECTION 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in section 1 of this ordinance on or before the first day of December, A. D. 1885, and said grantees shall, on or before the first day of February, deposit with the controller of said city the sum of five thousand dollars, in money of United States stocks or in
72½ treasury notes, which said deposit shall be forfeited to the City of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance. Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the controller shall refund to said grantees the amount so deposited as forfeit with him: Provided, that should said grantees be prevented from completing said railway by said December 1st, 1885, not due to any fault or action of said grantees, then the said grantees may be granted an extension of time within which to so complete said railway.

SECTION 3. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders
73 or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the City of Detroit in the sum of $50,000, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

Extension of Russell Street.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council October 9, 1885:

SECTION 1. Subject to all the provisions and requirements of said chapter 98 of the Revised Ordinances of 1884, of an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862," and of supplements and amendments thereto, the Detroit City railway is hereby authorized and permitted to, extend, lay, construct, use and operate a single street railway track in Russell street to Feery street connecting the present track of said railway northerly through Russell street to the south line of the Lake Shore and Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its
74 written acceptance of the terms hereof.

The following additional ordinance, applying to and gov-

erning the Detroit City Railway Company, was approved by the common council November 19, 1889:

SECTION 1. Subject to the provisions and requirements of chapter 98 of the Revised Ordinances of 1884, and of all ordinances supplementary and amendatory thereof, and of the ordinance approved January —, 1885, authorizing the Detroit City Railway Company to construct and operate a street railway on Brush, Russell and other designated streets in said city, permission and authority are hereby given to said Detroit City Railway Company, to extend its single track with suitable switches, on Russell street from Ferry avenue to the city limits and to operate and use the same as a part of the Brush and Russell Street Railway line.

SECTION 2. The laying of said track shall be completed within thirty days from the passage of this ordinance.

Trumbull Avenue Lines.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council July 31, 1885:

SECTION 1. Subject to all the provisions and requirements of chapter 50, of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879.

The Detroit City railway is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use, and to operate thereon railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue, thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the Congress and Baker Street railway on Seventh street southerly to Congress street, easterly along Congress street to Randolph street and southerly through Randolph street to the terminus of said road to Atwater street.

SECTION 2. That said Detroit City railway shall complete that portion of said route from the intersection of Howard and Seventh streets to Warren avenue and have the same in full operation within one year from the date of the passage of this ordinance.

SECTION 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary by the common council to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 4. This ordinance shall take immediate effect when said

Detroit City railway shall have filed with the city clerk a
76 written acceptance of the same and shall execute a good and sufficient bond to the City of Detroit in the sum of fifty thousand dollars ($50,000), to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Extension of Double Track on Michigan Avenue to Twenty-fifth Street.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council September 1, 1886:

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Thirteenth-and-a-half street to Twenty-fifth street in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof, and a written agreement to pave said street in accordance with the terms of its proposition as reported upon to the board of aldermen, by a special committee, August 10, 1886.

Relative to Taxation and to Adjust Past Taxes.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved and passed over the mayor's veto by the common council January 4, 1887:

77 SECTION 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expiration of each half year during the entire period above mentioned the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to said city treasurer the percentage so found to be due.

SECTION 2. From the 1st day of July, 1862, to the end of its franchise under the ordinance approved November 14th 1879, said railway shall also pay the City of Detroit such taxes as have been up to this date and shall be thereafter levied and assessed upon the lots and parcels of land and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner and shall be payable at the same time as other city taxes on lands.

SECTION 3. In adjusting the amount due under the foregoing sections from the first day of July, 1882, to the thirty-first day of December, 1886, the railway company shall be credited with all sums heretofore paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such balance as may be found due forthwith upon its ascertainment. Thereupon all suits and proceedings between the city and railway company shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SECTION 4. The above-mentioned percentage payments and the tax on lands provided for to accrue from January 1st, 1887, to
78 the end of the franchise of said railway, are to be paid by said railway company and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been or may be levied, assessed or imposed under any present or future law of authority. If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway, upon the payment of the percentage payments to become due under the ordinance; and the obligation made to such percentage payments shall be satisfied and discharged to that extent; and, in no event shall said railway be liable to pay under any form of tax, license or charge any sums in excess of said percentage payments and the tax on the lands of said railway as above provided. Provided, however, that nothing herein contained shall be construed as a consent on the part of the Detroit City railway to the levying or collecting of any further tax, license or charge than the tax on the gross receipts, hereinbefore provided for, and the tax on its lands hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of the said Detroit City railway.

SECTION 5. Subject to the provisions of this ordinance, which are only intended to change the provisions of the ordinance of November 14, 1879, as to the percentage on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

SECTION 6. This ordinance shall take effect when the Detroit City railway has filed its written acceptance of the same with the city clerk.

79 *Extension of Third Street Line to Holden Road.*

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council July 26, 1887:

SECTION 1. Subject to all the requirements and provisions of chapter 50 of the Revised Ordinance- of 1878 and of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain per-

sons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, and ordinances supplementary thereto, the Detroit City railway is hereby authorized, permitted and required to lay, construct, use and operate a single street railway track with suitable switches, turnouts and turn-tables, in and through the following streets and avenues in the said city of Detroit, and the same keep, maintain, and use, and to operate thereon street railway cars, to wit: From the present terminus of the line of track of said Detroit City railway on Third street or avenue in said city along said Third street or avenue to the Holden road; thence in a westerly direction along the center of said Holden road to the point where the track of the Detroit and Bay City Railroad Company crosses said Holden road.

SECTION 2. That portion of said route from the present terminus of the track on Third street or avenue to the Holden road is to be constructed and laid contemporaneously with the paving of said Third street or avenue to the Holden road; and that portion of said route on the Holden road to be constructed and laid before the first day of January, A. D. 1888, and the whole of said extensions to be in operation by January first, 1888, in connection with and as a part of the line of said Detroit City railway, now in operation on said Third street or avenue.

SECTION 3. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the City of Detroit in the sum of twenty-five thousand dollars ($25,000), to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days after the approval of this ordinance.

Extension of Trumbull Avenue Line.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council October 27, 1888:

SECTION 1. Subject to all the provisions and requirements of chapter 98 (of the Revised Ordinances of 1884, of the amendments thereof, and) of an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and of supplements and amendments thereto" the Detroit City railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway, northerly through Trumbull avenue to the southerly line of the Lake Shore and Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SECTION 2. The said Detroit City railway shall have said track completed and the same in full operation within sixty days from the date of the passage of this ordinance.

81 SECTION 3. It is hereby reserved to the common council of Detroit the right to make such further, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 4. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same and shall execute a good and sufficient bond to the City of Detroit in the sum of ten thousand dollars ($10,000), to be approved by the common council, and conditioned for the faithful performance of this ordinance, provided that such acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

East Fort Street Line—Chene Street Line—Cass Avenue Extension—Double Tracks in Jefferson Avenue and Gratiot Avenue—Mack Street Line.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council January 3, 1889:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the Year 1884, and amendments thereof and supplements thereto, and of an ordinance entitled, "An ordinance supplementary to an ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 14, 1879, and all amendments and supplements thereto, the Detroit City railway is
82 hereby authorized and permitted to lay, construct, use and operate a street railway with convenient tracks for turnouts, side-track curves and switches in and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884, and in said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street turns on to Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly on Brush street with its intersection with Fort street east, thence easterly along said Fort street easterly to Mt. Elliott avenue, thence along said Mt. Elliott avenue to the Jefferson Avenue double track to the easterly limits of the city.

Also, to extend its track on Cass avenue from where it now turns on to Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson aveuue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the city of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street rail-
83 way track in, along and through Mack street, from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue, near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the said Detroit City railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge, and approaches thereto, to Belle Isle park, to said park, with all the privileges and rights which may be granted to any other street railway.

SECTION 2. The track hereby authorized on Congress Brush and Fort street- shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be con-
84 structed on Joseph Campau avenue Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratio*n* avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the common council.

SECTION 3. Permission and authority is hereby given to the said Detroit City railway to run its cars at a rate of speed not exceeding ten miles an hour, and is hereby required to run thereon at an average speed of not less than six miles per hour, and whenever it shall be deemed advisable to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem

best in its judgment for the purpose of properly and safely conducting its business in said city of Detroit upon all or any of said lines now in use and operated or hereafter to be in use and operated by said company, said change to be made under the provision of the board of public works.

SECTION 4. The above-mentioned additional lines shall be operated in connection with and as a part of the present system of the Detroit City railway, but the permission and authority hereby given shall be inoperative and void unless the said Detroit City railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company
85 shall agree to do and perform the following with reference thereto, to wit:

A. It shall carry passengers from its Cass Avenue and Third Street, Trumbull Avenue, Michigan Avenue, and Congress and Baker Street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets, shall be entitled to be transferred at Fort street to and conveyed by cars running on the proposed line on Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot Avenue and Michigan Avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride on said Gratiot Avenue line and proposed line on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction, over the Fort Street east, Chene Street and Gratiot Avenue
86 lines for a single fare of five cents.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by this company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-

five cents for one continuous trip, with all the rights of transfer and through carriages provided for in paragraphs "A" "B" and "C" of this section.

E. It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines and shall run the cars on the said Woodward Avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on Woodward avenue.

SECTION 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period by the ordinance approved November 14, 1879, that is to say, until November 14, 1909.

SECTION 6. It is hereby reserved to the common council of
87 the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary by the common council to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 7. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same, and shall execute a bond, to the City of Detroit, in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bonds shall be filed within thirty days of the approval of this ordinance by the mayor.

Extension of Line on Michigan Avenue to Westerly City Limits.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council April 5, 1899:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit, the year 1884, and of an ordinance supplementary to an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereof, approved November 14, 1879, and all ordinances supplementary thereof and in amendment thereto, the Detroit City railway is hereby authorized and permitted to lay, construct, use and operate a double track on and through Michigan avenue in said city of Detroit, from the present terminus of its double track on Michigan avenue, westerly to the city limits.

88 SECTION 2. Said track shall be laid contemporaneous with the pavement of said Michigan avenue, and only so far as said street is or may hereafter be paved, and the expense of paving the portions of said street between the outer rails of said track shall be paid by said company.

Providing for the Sale of Certain Tickets on Cars.

The following amendment, applying to and governing the Detroit City railway, was approved by the common council February 4, 1893:

Whereas, section 6 of an ordinance approved January 3, 1889, being part of chapter 109 of the Revised Ordinances of the City of Detroit for the Year 1890, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interests, welfare and accommodation of the public in relation to the Detroit City railway, its successors and assigns, is reserved to the common council of the city of Detroit; and

Whereas, paragraph D of section IV of said ordinance approved January 3, 1889, with reference to said railway, being part of chapter 109 of the Revised Ordinances of the City of Detroit for the Year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight (8) tickets for twenty-five cents to be good for transportation between certain hours of each day.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns, to furnish and provide the conductor of each and every car operated by the said company within the limits of the city of Detroit with tickets to be good for transportation between the hours of 5.30 and 7 a. m. and 5.15 and 6.15 p. m., each ticket to be good for transportation as provided for in said ordinance.

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(As amended February 26, 1895.)

SECTION 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductors or other duly authorized agents, to any person or persons applying therefor upon each and every car operated by said company within the limits of the city of Detroit, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5.30 and 7 a. m. and 5.15 and 6.15 p. m., at the rate of eight (8) tickets for twenty-five cents, each ticket to be good for one fare.

(As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Detroit City railway, its successors and assigns, shall neglect to provide tickets and refus/ to sell to persons applying therefor as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine when so imposed may be recovered from the person or corporation so convicted in an action at law in the proper court.

Additional Tracks on Griswold, Woodward, and Atwater.

The following amendment, applying to and governing the Detroit Citizens' Street Railway Company, was approved October 14, 1892, by the common council of Detroit:

90 SECTION 1. It is hereby ordained by the people of the city of Detroit: Consent, permission and authority is hereby granted to the Detroit Citizens' Street Railway Company to construct, maintain and operate street railways with the necessary tracks, cross-over tracks and turnouts, in and through the following streets and avenues in the city of Detroit:

1. To construct, maintain and operate a single track from the existing tracks operated by said company at the intersection of Griswold street and Grand River avenue, southerly along Griswold street and connecting with the existing track operated by said company on Griswold street, near the corner of State street.

2. A single track from the existing track operated by said company at the intersection of Griswold street and Larned street west, thence southerly along Griswold street to Atwater street, and thence through Atwater street, connecting with the tracks on Woodward avenue.

3. A single track from the north line of Jefferson avenue on Woodward avenue and thence through Woodward avenue to Atwater street.

SECTION 2. The said railways hereby authorized shall be operated as part of the system of railways authorized by the ordinance approved May 1st, 1898, granting certain privileges to Nathaniel Prouty and others for a street railway along Grand River avenue, and the ordinance amendatory thereof and supplementary thereto, and shall be subject to the terms and conditions thereof. The same may be operated through Griswold street over the line of railway now existing thereon, subject to all the rights, whatever they may be, which were granted under an ordinance granting authority to the Central Market, Cass Avenue, and Third Street Railway Com-

91 pany and its assigns, to construct and operate a street railway on Griswold. But this ordinance shall not be held or treated as extending the time when the rights and privileges of maintaining and operating street railways under said ordinance approved May 1, 1868, or said supplemental ordinances expire; nor shall the same prejudice or waive any claim which the City of Detroit may have as to the legal enactment of said ordinances or as to any of the terms or conditions thereof. Nor shall the same prejudice or waive any claim of said city in the suit now pending between the said city and the Detroit Citizens' Street Railway Company and others. No additional fare shall be required for carriage over any tracks hereby authorized. Switches on the tracks hereby authorized shall not be permitted.

SECTION 3. It is further ordained that only two railroad tracks shall be maintained and operated by said Detroit Citizens' Street Railway Company on Woodward avenue, between Grand River avenue and

Michigan avenue, and the westerly track heretofore operated by the Detroit City railway shall be removed, and upon the following terms, agreements and conditions:

1. The track heretofore operated by the Grand River Street Railway Company, the extension of which from *which* its present terminus at Jefferson avenue to Atwater street is hereby permitted, shall be part of the system of railways authorized under the ordinance approved May 1st, 1868, and may be connected with the other lines or tracks of the Detroit Citizens' Street Railway Company at any points where said company may desire to make convenient connections with that track, so that cars from other lines may be operated thereon and cars on said track may be likewise operated on other lines or tracks.

92 2. The right of maintaining and operating a street railway between Grand River avenue and Jefferson avenue by said Detroit Citizens' Street Railway Company shall be exclusive, and the common council of the city of Detroit shall not give its consent to the construction or operation of any railroad track by any street railway company on Woodward avenue between Grand River and Jefferson avenues before the expiration of the time when the right to maintain a railway on Woodward avenue heretofore granted to the Detroit City railway shall expire. And said Detroit Citizens' Street Railway Company may restore its track for the removal of which this agreement is made, if said common council shall, within the time above limited, grant consent to any other street railway company to construct a track on Woodward avenue, between Grand River avenue and Jefferson avenue.

4. The said Detroit Citizens' Street Railway Company shall within thirty days from the date when this ordinance shall take effect pay to the treasurer of the City of Detroit any costs heretofore paid of repaving the space to be occupied by the tracks that are hereby authorized, on all streets or portions of streets upon which said tracks are laid.

5. Any street railway to whom the privilege may be granted to construct a line of street railway through any of the streets mentioned in this ordinance and in respect to which a privilege is hereby granted, may use for operating its road all of the additions to the line of said Citizens' railway as herein and hereby authorized, upon such terms as to compensation as shall be determined by arbitrators to be appointed as follows: One of the arbitrators to be appointed by the Detroit Citizens' Railway Company, and one to be appointed by the street railway company to whom such privilege may be

93 granted and if they are unable to agree upon the compensation to be paid Citizens' Street Railway Company for the use of such track, then a third arbitrator shall be appointed by the then presiding judge of the circuit court for this county, and any two of the persons so appointed may make such award.

SECTION 6. Said Citizens' Street Railway Company shall file its acceptance of the terms hereof with the city clerk within thirty days from the date when this ordinance shall take effect, otherwise the same shall be void.

SECTION 7. An ordinance authorizing the Detroit Citizens' Street Railway Company to construct, maintain and operate railway tracks on certain streets approved August 30th, 1892, be and the same is hereby repealed.

SECTION 8. This ordinance shall take immediate effect.

Double Track on Trumbull Avenue.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved and passed over the mayor's veto by the common council September 10, 1895:

SECTION 1. Subject to all the provisions and requirements of chapter 109, of the Revised Ordinances of the City of Detroit, for the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change its present track on Trumbull avenue to a double track from Michigan avenue to the Lake Shore and Michigan Southern Railway crossing, and to maintain and operate the same as a double-track line.

If the city should at any time authorize the widening of said street and paving, it shall be paid by the Citizens' Company
94 its successors and assigns, and not the abutting property-holders.

SECTION 2. This ordinance shall take effect, if accepted in writing by said company within ten days after its final passage.

Double Track on Dix Avenue and Baker Street.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved by the common council September 17, 1895:

SECTION 1. Subject to all the provisions and requirements of chapter 109 of the Revised Ordinances of the City of Detroit, for the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change the single track on Dix avenue to a double track from the westerly city limits along Dix avenue to Twenty-fourth street; and to construct a single track on Dix avenue from Twenty-fourth to Twenty-third street, and to construct a single track on Twenty-third street from Dix avenue to Baker street; and to change the single track to a double track on Baker street from Sixteenth street to Trumbull avenue.

SECTION 2. The Baker Street line of the Detroit Citizens' Street Railway Company, after the Porter and Abbott Street lines have been put in operation, shall run through Michigan avenue and Woodward avenue to Congress street, and east on Congress street over what is known as a loop line to Mt. Elliott avenue.

That in consideration of crossing Baker Street bridge over the M. C. R. R. the company shall shore the present structure
95 in such shape as to make it safe for motor cars to cross, and be responsible and hold the city harmless from any damage

from accident or otherwise in consequence of the use of said bridge for street railway purposes; and provided further, that when the city reconstructs said Baker Street bridge the said Detroit Citizens' Street Railway Company, grantee herein, shall pay to the city 25 per cent. of the cost of said reconstruction at the time the contract for such reconstruction is made; and further provided that where a street is widened the cost of widening and the additional pavement made necessary, the expense shall be born- by the said Citizens' Street Railway Company, provided that whenever the Detroit railway shall relinquish its right to construct and operate a railway on Lafayette avenue, the Detroit Citizens' Street Railway Company will permit said Detroit railway to have the joint use of their tracks on Michigan avenue from Porter and Abbott street- to the east line of Griswold street on the payment by said Detroit railway to said Detroit Citizens' Railway Company — the sum of ten thousand dollars, if said relinquishment of Lafayette avenue and the said payment by said Detroit railway be made before any track is laid on Lafayette avenue by said Detroit railway, its successors or assigns.

SECTION 3. This ordinance shall take effect, if accepted in writing by said company, within ten (10) days after its final passage.

Double Track on Mack Avenue.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved by the common council October 26, 1895:

96 SECTION 1. Subject to all the provisions of chapter 109, of the Revised Ordinances of the City of Detroit, of the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change its present single track on Mack avenue to a double track, and to operate and maintain same as a double-track street railway.

SECTION 2. Transfers without additional charge shall be given, good for one continuous ride, from the Gratiot Avenue line to the Mack Avenue line, said transfers to be good at the junction of the two avenues.

SECTION 3. This ordinance shall take immediate effect if accepted in writing by the grantee within ten (10) days after its final passage.

Grand River Street Railway.

The following original ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council of Detroit on May 1, 1868:

Whereas, Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King and James P. Mansfield, their associates, successors and assigns, propose to organize as a body politic and corporate, under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 13, 1855, (Laws of 1855, p. 338), for the purpose of constructing and

operating in and through the streets of the city of Detroit; therefore,

Be it ordained by the common council of the city of Detroit:

97 SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in the said Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, James P. Mansfield, their associates, successors and assigns organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches in and along the course of the streets and bridges in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use and to operate thereon railway cars and carriages during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance: Provided, that nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running in the city of Detroit.

SECTION 2. That said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, through said first-named avenue to its intersection with Grand River avenue, and from thence on through said Grand River avenue, to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe & Toledo Railway tracks, and also on or through any other street or streets running between the western terminus above specified, and Woodward avenue to the Detroit river as the common council shall by resolution designate: Provided, that the track from Fort street to Jefferson avenue shall be laid under the direction of the committee on streets and the city engineer. (As amended June 26th, 1871.)

98 SECTION 3. All railways built, constructed or maintained under the provisions of this ordinance, shall be laid in the center of any and each street wherein the same are built, constructed or maintained (save upon Woodward avenue), if on a single track; and if on a double track, the inside rail of each track shall be laid within four feet and two inches of the center of the street; the said rails shall be laid four feet eight inches apart, so as to accommodate the most common width of carriage wheels: Provided, nevertheless, that in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may at any time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track; provided the consent of the common council is first obtained.

SECTION 4. The track of said railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same; and the upper surface of the rails shall be laid flush with

the surface of the streets, and shall conform to the grades thereof as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, with necessary ties and stringers, the same shall be done at the expense of the grantees; and in all streets, and parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, or their assigns, shall be required to keep the sur-
99 face of the streets inside of the rails in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portions of the streets at the expense of the grantees, and in such manner as not to obstruct travel in any part of the street.

SECTION 5. Consent, permission and authority is hereby given, granted and vested to the Grand River Street Railway Company to lay and construct an additional track along Woodward avenue, from Grand River avenue to the north line of Fort street, so as to form and complete a double track between said two points. Such additional track to be laid under the supervision and direction of the board of public works, and subject to all the conditions and provisions of the ordinance governing and controlling said railway: Provided, however, that such authority and permission and all rights therein, may be revoked and withdrawn by the common council of said city should any transfer, assignment or consolidation of said railway company be made or effected with any other railway company or corporation. The cars to be used on said railway shall be drawn by animals only, at a speed not exceeding six miles per hour, and shall be run at intervals not exceeding one regular car every five minutes during twelve hours each day, from Lincoln avenue to Jefferson avenue, and up to eleven o'clock at night. The cars and carriages used by said grantees shall be of the best style used on street railways in said city, and shall be used for no other purpose than to transport passengers and their ordinary baggage: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstruction by snow and otherwise. (As amended March 3, 1883.)

SECTION 6. The rate of fare for any distance shall not ex-
100 ceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided cars so chartered shall not be considered regular cars within the meaning of the preceding section.

SECTION 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 8. The said grantees shall complete their railway from Woodward avenue through Grand River street, to the easterly line in Woodbridge farm, contemporaneously with the paving of said street to said easterly line of the Woodbridge farm; said road thence to the easterly line of the Woodbridge farm to be completed to the westerly limits of the city as soon as the public necessity requires it,

and the common council shall be the judge of such necessity; and shall also complete their road on any street designated by the common council, from Grand River street to the Detroit river, or to Jefferson avenue, within three months after such designation shall be made by said council.

SECTION 9. No car shall be allowed to stop at a cross-walk, or in front of any intersecting street, except to avoid collision or to prevent danger to persons or property in the street.

SECTION 10. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 11. The grantees or their assigns, shall employ
101 careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

SECTION 12. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SECTION 13. Conductors shall announce to passengers the names of the principal squares and streets as the cars reach them.

SECTION 14. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when any car moves up, so as to leave the track unobstructed, and the drivers of any vehicles refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of said city of Detroit, and costs of prosecution shall not be at the expense of the city.

SECTION 15. The cars, after sunset, shall be provided with signal lights—blue in front, and green in rear of the cars.

SECTION 16. Wherever gas or water pipes and sewers are now laid in the streets herein specified, and through railways are to pass, the said railway must be laid down and maintained subject to the rights now in the city and the gas company, and board of public works to take up and remove said pipes or sewers in such manner as not unnecessarily to damage or injure said railways, or their use,
without claim against said city, gas company, or the board
102 of public works; and the common council expressly reserves to itself the right hereafter to lay down, or to permit to be laid down and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the street to its former condition.

SECTION 17. If said grantees or other assigns shall fail to complete any of the aforesaid railways within the time prescribed by this or-

dinance, or by resolution of the common council, then the rights and privileges granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof; provided, that if said grantees shall be delayed by the order or injunction of any court; provided said injunction is not obtained by connivance of said grantees; and further, provided that if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SECTION 18. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interests, safety welfare or accommodation of the public in relation to said railway.

SECTION 19. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of this passage.

103 SECTION 20. This ordinance shall be void and of no effect unless the grantees shall, within one month from the date of the passage thereof, notify the common council in writing of their acceptance of and agreement to the provisions of this ordinance, and shall, within six months after said last-named date, commence the work of building and constructing said railway from Woodward avenue to the east line of the Woodbridge farm.

SECTION 21. It is distinctly provided, understood and agreed, that the rights, franchises or privileges, hereby conferred upon the grantees, are subject to the rights now vested in the Detroit City railway.

SECTION 22. On and after the date upon which this ordinance shall take effect, whenever any of the streets or avenues through which the line of said railway is, or may be laid, shall be ordered to be paved, repaved or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving and repairing that portion of the streets and avenues which lies between the outer rails of their track, including the space between all double tracks and switches, and said company shall at all times keep the same clean, and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said spaces to use either cedar blocks or cobble stone, or some similar durable or proper material, to be approved by the common council. (As amended June 12, 1882.)

SECTION 23. The said grantees and their assigns shall pay to the city treasurer of Detroit, annually, after five years from the passage of this ordinance, fifteen dollars on each and every passenger car, to be collected as a license for the use of the city, after the term

104 of five years from and after this date.

SECTION 24. Whenever the said grantees, their successors or assigns shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and

upon them by this ordinance shall be given, granted, and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

Myrtle Street Railway.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council June 27, 1885:

SECTION 1. Subject to all and every of the provisions regulations and requirements of chapter fifty-two (52) of the Revised Ordinances of the City of Detroit for 1878, and of the amendments thereof, consent, authority and permission are hereby given to the Grand River Street Railway Company to lay, construct, use and operate a single street railway track, with suitable switches, turnouts, and turn-tables, on and through Myrtle street, in the city of Detroit, and the same to keep, maintain, and operate thereon street railway cars, in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance and the amendments thereto, to wit: Connecting and joining the Grand River Street Railway track at the intersection of Myrtle street and Grand River avenue, and running thence westerly on and through Myrtle street to Mt. Hope avenue.

SECTION 2. The said company shall run through cars on
105 the route described from the westerly terminus on Myrtle street to the intersection of Woodward and Jefferson avenues, and the rate of fare over such route shall be five cents.

SECTION 3. The said grantee shall complete said railway in and through said Myrtle street as aforesaid and have the same in complete operation in connecting with the track of said Grand River Street railway within one year from the approval of this ordinance, or within one year from the establishing the grade of said Myrtle street in accordance therewith.

SECTION 4. It is hereby reserved to the common council of the city of Detroit to make such further rules and regulations as may from time to time be deemed by the said common council necessary to protect the interest, safety and accommodation of the public in relation to said route.

SECTION 5. This ordinance shall take immediate effect if the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance, file with the city clerk its acceptance thereof, and a good and sufficient bond to the City of Detroit in the penal sum of five thousand dollars, to be approved by the council, for the faithful performance of the terms of this ordinance by said company.

Extension of Charter.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council December 3, 1885:

SECTION 1. On the first day of January in each year from
106 the first day of January, 1886, the Grand River Street Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent., during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each year, as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts; and said special tax shall be in lieu of license, and other taxes and charges, under existing ordinances: Provided, that this shall not in any manner effect the obligations of said company in the matter of paving or repairing pavements, as required by existing ordinances.

SECTION 2. The powers and privileges conferred and obligations imposed on the Grand River Street Railway Company by the ordinance passed May 1, 1868, and the amendments thereto, are hereby extended and limited to thirty years from and after the first day of January, A. D. 1886. And it is further agreed and stipulated that the running of cars, on any street, or any portion thereof, will be discontinued, temporarily, on such occasions as the board of aldermen may, by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

SECTION 3. This ordinance shall take immediate effect when written acceptance of the terms thereof *are* filed in the office of the city clerk of the city of Detroit by the said Grand River Street Railway Company, and from that date, all ordinances, or parts of ordinances, in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances, not in conflict, are hereby affirmed and continued in force.

107 SECTION 4. The right to amend or repeal this ordinance in case of its violation by said company, is expressly reserved.

Extension of Grand River Avenue Line to Westerly City Limits.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council August 3, 1888:

SECTION 1. Subject to all and every of the provisions regulations and requirements of chapter fifty-two (52) of the Revised Ordinances of the City of Detroit for 1878, and of the amendment thereof, consent, permission and authority are hereby given to the Grand River Street Railway Company to lay, construct, use and operate with animal power, a single street railway track, with suitable switches, turnouts and turn-tables on and through the center of Grand River avenue from the present terminus of its track on said avenue to the westerly limits under the supervision of the board of public works, and the same to keep, maintain and operate thereon street railway cars in the manner and subject to the conditions herein contained and to all the requirements and conditions set forth in said ordinance and amendments thereto.

SECTION 2. The said grantee shall complete said extension of rail-

way as soon as practicable after the approval of this ordinance and before the said street shall be paved under the proceedings now before the common council to pave the same, and in advance of such pavement, and a failure to comply with the provisions shall operate as a forfeiture of all rights under this ordinance.

SECTION 3. It is hereby reserved to the common council of the city of Detroit to make such further rules and regulations as
108 may from time to time be deemed by the said council necessary to protect the interests, safety and accommodation of the public in relation to said route.

SECTION 4. This ordinance shall take effect when the Grand River Street Railway Company shall, within thirty days after the approval of this ordinance, file with the city clerk its acceptance thereof, and a good and sufficient bond to the City of Detroit in the penal sum of five thousand dollars ($5,000), to be approved by the council, for the faithful performance of the terms of this ordinance by said company.

Crawford Street and East Congress Street Lines—Double Track on Grand River Avenue.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council January 3, 1889:

SECTION 1. Subject to all the provisions, regulations and requirements of chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Street Railway Company to construct, operate and maintain a double-track street railway in, along and through Grand River avenue so called, in the city of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turn-tables and cross-overs; also to construct, operate and maintain a single street railway track in, along and through Crawford street in the said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence northerly along the center of said Crawford street to the Detroit and Bay City Railroad crossing, together with all suitable and necessary turnouts, turn-tables, curves and switches; also to con-
109 struct, operate and maintain a single-track railway in, along, through Congress street east in said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence easterly along said Congress street east to the easterly limits of the city of Detroit, or so far as said Congress street may be opened, and until said Congress street shall be opened to the city limits, or one year thereafter as hereinafter provided, the said Grand River Street Railway Company, the permission of the Detroit City railway having been first obtained for such action—shall connect its track at the corner of Mt. Elliott and Congress streets east with that of the Detroit City railway and run its cars over said tracks of said Detroit City railway along Mt. Elliott and Jefferson avenue east of Mt. Elliott to the Boulevard,

thence to a point at a convenient distance from the Belle Isle Park bridge to be fixed by the board of public works.

SECTION 2. Said double track on said Grand River avenue shall be so laid that the outer rails of said track shall be equidistant from a line drawn along the center of said street and in addition to the paving required to be done by the said Grand River Street Railway Company, under its present ordinance it shall lay and maintain the pavement between the double tracks hereby authorized.

SECTION 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration for the permission hereby granted, the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of
110 which it shall agree to carry passengers from the westerly terminal of its line on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets; also for a continuous trip from any point on the line of said railway, for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way when offered for fare by persons taking passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon.

SECTION 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance: Provided, however, that the railway track along and upon Congress street east, between Mt. Elliott avenue and the city limits, shall be laid, constructed and in use within one year after that portion of Congress street east shall be opened for public use: Provided also, that the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance by the mayor, file its acceptance thereof in writing, and shall give within the same period of time a bond in the penal sum of $20,000 for the faithful performance by it of the terms and conditions of this
111 ordinance.

SECTION 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

SECTION 6. That said company is hereby authorized to run its cars at a rate of speed not exceeding ten miles per hour, and is hereby required to run them at an average rate of speed of not less than six miles per hour, and is also permitted to use, in operating its cars, electricity, or any other proper or suitable motive power used by

any other street railway company, now or hereafter organized and operated in the city of Detroit.

Third Street Line.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council April 23, 1889:

SECTION 1. Subject to all the provisions of chapter 100 of the Revised Ordinances of 1884, and of all amendments and supplements thereto, and subject to the provisions of an ordinance entitled, "An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884 of the City of Detroit, and all amendments and supplements thereto," approved January 3, 1889, consent, permission and authority is hereby given to the Grand River Street Railway Company to lay a single-track street railway, with all necessary and convenient turnouts, side tracks, and switches, in, along and through Third street, in the city of Detroit, from its intersection with Grand River street southerly along said Third street in the center thereof to a point on said Third street south of Woodbridge street and
112 between said Woodbridge street and the bank of the Detroit river, and the same to keep, maintain and use, and to operate thereon street railway cars, subject and according to the provisions of the above-mentioned ordinances.

SECTION 2. Said track shall join with the tracks of the Grand River Street Railway Company on Grand River street, and shall be operated as a part of and in connection with the present street railway lines of said company. Said line shall be constructed and in operation within one year from the date of the approval of this ordinance.

All Grand River Cars to Run to City Limits.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, as assignee of the Grand River Street Railway Company, was approved by the common council January 3, 1893:

SECTION 1. It is hereby ordained by the people of the city of Detroit: That the Detroit Citizens' Street Railway Company, as the assignee of the Grand River Street Railway Company, be and is hereby required to run all of its cars on Grand River avenue to the westerly boundary line of the city.

SECTION 2. Each and every violation of or failure to comply with the requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs. (As amended March 21, 1893.)

SECTION 3. This ordinance shall take effect at the expiration of five days from the date of the approval of this ordinance.

Curve at Grand River and Cass Avenues.

The following ordinance, applying to and governing the
113 Cass Avenue and Grand River Avenue street car lines, was approved by the common council September 29, 1893:

SECTION 1. Consent, permission and authority is hereby granted to the owners of the Cass Avenue and Grand River Avenue street car lines to construct and operate a single-track curve connection from the Cass Avenue line with the northerly track of the Grand River Avenue street car tracks, extending through the northeasterly intersection of said streets.

SECTION 2. This ordinance shall not be held or treated as extending the rights or privileges of either of said street railway lines, and is granted subject to all of the provisions of the ordinances existing with reference to the construction and regulation of street railways in the city of Detroit, and shall not be held to prejudice the city of Detroit in any of its rights now being contested in the courts with reference to the life of the street railway franchise.

SECTION 3. The owners of said railway lines shall file an acceptance of the terms hereof with the city clerk within ten days from the date when this ordinance shall take effect. Otherwise, the same shall be void.

SECTION 3. This ordinance shall take immediate effect.

Dix Avenue Railway.

The following ordinance, applying to and governing the Dix Avenue railway, was approved by the common council April 17, 1886:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in George Dorr, Samuel A. Plumer, Calvin K. Brandon, Bethune Duffield, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan, to lay a single track for a railway, with
114 all the necessary tracks for turnouts, side tracks and switches, in and along the course of the streets in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the time hereafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SECTION 2. The said grantees are by the provisions of this ordinance authorized to construct and operate a railway on and through the following streets, namely: Commencing at the intersection of Baker and Twenty-fourth streets, thence on and through Twenty-fourth street to the Dix road, and thence, with the exclusive right, on and through the Dix road to the city limits.

SECTION 3. Said railway through the said streets shall be constructed under the supervision of the board of public works, and the tracks shall be laid in the center of, and conform to the grade of said streets. The gauge of said track shall be four feet eight and one-half

inches, and the rails shall be a flat rail and shall be so laid as least to interfere with public travel. (As amended June 25, 1889.)

SECTION 4. The cars to be used on said railway shall be drawn by animals, and shall run at a rate of speed not to exceed ten miles an hour, and shall run as often as public convenience shall require and the common council shall prescribe: Provided, that the said company shall run regular cars at least once in thirty minutes during the sixteen hours of every day; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; provided, that other cars and carriages may be used for constructing and repairing said railway tracks
115 and for clearing the same from snow and other obstructions. (As amended June 25, 1889.)

SECTION 6. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits; the payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Congress & Baker Street railway, to any point upon the line of said last-named railway; and payment of fare by a passenger riding west upon said Congress & Baker Street railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city limits; provided, in case the Congress & Baker Street railway shall be extended easterly, the said fare above mentioned shall entitle the passengers traveling in either direction to a ride over the line of such extension.

SECTION 7. No car shall be allowed to stop upon a cross-walk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 8. The grantees or their assigns shall employ careful, sober and prudent persons to operate said railway and it shall be the duty of such persons to be vigilant and watchful to protect the public from danger.

SECTION 9. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SECTION 10. Conductors shall announce to passengers the names of the crosss-treets as the cars reach them.

116 SECTION 11. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out, when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so, shall be liable to a fine not exceeding fifty dollars on conviction before the recorder's court of the city of Detroit.

SECTION 12. Said grantees shall provide and keep in repair such substantial and permanent approaches to its tracks at all points on the line of its road so that teams, vehicles and persons shall be enabled to cross the track conveniently at all times.

SECTION 13. The cars, after sunset, shall be provided with proper signal lights.

SECTION 14. The said railway shall be laid down subject to the right of the city or any municipal board, to lay down, take up, change or remove any work of any kind on or beneath the surface of the streets, without any claim for damages on the part of said railway.

SECTION 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after its passage.

SECTION 16. Whenever the grantees, their successors and assigns, shall have organized themselves into a body politic and corporate under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council.

SECTION 17. Cars going in the same direction shall not approach each other within a distance of one hundred feet, except in
117 cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 18. On the first day of July and January in each year after the completion of said railway, said railway company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railways within the city limits, and the treasurer of said company on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 19. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies between the outer rail of their tracks, and said company shall, at all times keep the same clear and in good condition; but said company shall have the right for the purposes of paving, repaving or repairing said space to use either cedar blocks or cobblestones or some other similar durable and proper material, such material to be subject to the approval of the board of public works.

The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligation of said company to pay general taxes on all its property.

SECTION 20. This ordinance shall be void and of no effect unless the grantees, their associates, successors and assigns, shall, within one month from the date of the approval thereof, notify the
118 common council, in writing, of its acceptance and shall file a good and sufficient bond in the sum of five thousand dollars to be approved by the city controller, conditioned that the said railway shall be completed in the time specified herein and for the

faithful performance of the terms of this ordinance; and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

SECTION 21. The right is hereby reserved to the common council of the city of Detroit to make such further rules, orders or regulations as from time to time may be deemed necessary by the common council to protect the interest, safety, welfare or accommodation of the public in relation to said railway.

SECTION 22. Any wilful violation of or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of such fine and costs the court may make a further sentence, that the offender be imprisoned in the Detroit house of correction or the county jail until such fine and costs are paid: Provided, however, that the term of imprisonment shall not exceed the period of six months.

SECTION 23. The right to amend or repeal this ordinance, in case of its violation by said company, is expressly reserved.

Service on Twenty-fourth Street and Dix Avenue.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council Nov. 27, 1894:

Whereas, the Revised Ordinances of the City of Detroit pro-
119 vide that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interest, welfare and accommodation of the public in relation to the Detroit City railway, its successors and assigns is reserved to the common council of the city of Detroit; and

Whereas, the interest, welfare, and accommodation of the public in the opinion of the common council of the city of Detroit requires that better street railway facilities shall be furnished residents of the western portion of the city, along and adjacent to Dix avenue, by the more frequent operation of street cars on the street railway on said avenue and Twenty-fourth street:

It is hereby ordained by the people of the city of Detroit—

SECTION 1. That from and after November 25th, A. D. 1893, it shall be the duty of the Detroit City railway, its successors and assigns, to run and operate street cars in each direction upon the street railway on Twenty-fourth street and upon Dix avenue from Twenty-fourth street to the westerly city limits in such manner that the intervals between cars going in the same direction shall not exceed eight minutes between the hours of 6 o'clock a. m. and 10.30 p. m. each day.

SECTION 2. For each and every day in which the said Detroit City railway, its successors and assigns, shall neglect to run and operate cars as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 3. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed two hundred dollars and costs, and such fine, when so

imposed, may be recovered from the person or corporations
120 so convicted in an action at law in the proper court.

SECTION 4. This ordinance shall take immediate effect.

Highland Park Railway.

The following ordinance, applying to and governing the Highland Park Railway Company, was approved by the common council July 13, 1886:

SECTION 1. That consent, permission and authority are hereby given, granted and duly vested in the Highland Park Railway Company, its successors and assigns, a corporation organized under the laws of the State of Michigan, to construct, maintain and operate a single or double track street railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along Woodward avenue, commencing at the northerly side of the railroad crossing and running thence northerly to the city limits, and to keep, maintain, use and operate thereon street railway cars and carriages during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance: Provided that until the double track is laid the switches shall be laid on such side as will be occupied by said double track when the same shall be constructed.

SECTION 2. The track of said railway shall be constructed under the supervision of the board of public works; and of rails similar to the rails now used by the City Railway Company on Woodward avenue, and such as shall the least obstruct the free passage of vehicles or carriages over, across or along the same, and the upper surface of the rails shall be laid flush with the surface of the street, and shall conform to the grade thereof as now established, or as it shall from time to time be re-established or altered by the city authorities.

121 SECTION 3. The railway through said street shall be laid so that the center of the track shall be the center of the street, if on a single track, and if on a double track the inside rail of each track shall be laid within two feet and four inches of the center of the street, so as to enable two cars to pass on opposite tracks, and leave a space between said cars of at least eighteen inches, and the gauge of said tracks shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels; provided, that where a single track is laid in the first instance, it may be laid so as to form one of a double track authorized under this section.

SECTION 4. The cars to be used on said railway shall be drawn by animals or operated by electric motors, and shall run at a rate of speed not to exceed ten miles per hour, and shall run as often as public convenience shall require and the common council shall prescribe: Provided, that said company shall run regular cars at least once in thirty minutes during sixteen hours in every day; and the cars in use upon said railway shall run for no other purpose than to transport passengers and their ordinary baggage: Provided, that if

the operation of said railway by electricity shall be or become impracticable or dangerous to human life, the common council may revoke the privileges of thus operating said railway and compel said company to use animal power instead.

SECTION 5. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. The payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Woodward Avenue street railway, to any point upon the line of
122 said last-named railway; and payment of fare by a passenger riding north upon said Woodward Avenue street railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city limits.

SECTION 6. No car shall be allowed to stop upon a cross-walk or in front of any intersecting streets, except to avoid collision or prevent danger to persons or property in the street. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped — as to leave the rear platform slightly over the crossing.

SECTION 7. The grantees or their assigns, shall employ careful, sober and prudent persons to operate said railway, and it shall be the duty of such employees to be vigilant and watchful to protect the public from danger.

SECTION 8. Conductors shall not allow ladies or children to enter or leave the car while in motion.

SECTION 9. Conductors shall announce to the passengers the names of cross-streets as the cars reach them.

SECTION 10. The cars shall at all times be entitled to the track, and any vehicle upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding fifty dollars, on conviction before the recorder's court of the city of Detroit.

SECTION 11. Said grantees shall provide and keep in repair such substantial and permanent approaches to its tracks at all points on the line of its road, so that teams, vehicles and persons shall be enabled to cross the track conveniently at all times.

123 SECTION 12. The cars, after sunset, shall be provided with signal lights.

SECTION 13. The said railway shall be laid down subject to the right of the city, or any municipal board, to lay down, take up, change or remove any kind of work on or beneath the surface of the streets, without any claim for damages on the part of said railway.

SECTION 14. The powers and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after the date of its passage.

SECTION 15. Cars going in the same direction shall not approach each other within a distance of one hundred feet, except in cases of

accident or at stations, or for the purpose of connecting two cars together.

SECTION 16. On the first day of July and January in each year after the completion of said railway, said railway company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 17. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies
124 between the outer rails of their tracks, and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said space to use either cedar blocks or cobblestones or some other similar durable and proper material to be subject to the approval of the board of public works. The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligations of said company to pay general taxes on all its property.

SECTION 18. This ordinance shall be void and of no effect unless the grantees, their successors and assigns, shall, within one month from the date of the approval thereof, notify the common council of its acceptance, in writing, and shall file a good and sufficient bond in the sum of five thousand dollars, to be approved by the city controller, conditioned that the said railway shall be completed within the time specified herein, and for the faithful performance of the terms of this ordinance; and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

SECTION 19. The right is hereby reserved to the common council of the city of Detroit to make such further rules, orders or regulations as from time to time may be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

SECTION 20. Any wilful violation of or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed five hundred dollars and costs; and in the imposition of such fine and costs the court may make a further sentence, that the offender be imprisoned in the Detroit house of correction or
125 county jail until such fine and costs are paid: Provided, however, that the term of imprisonment shall not exceed the period of six months.

SECTION 21. The right to amend or repeal this ordinance, in case of its violation by said company, is expressly reserved.

Railroad Crossing.

The following ordinance, applying to and governing the Highland Park Railway Company, was approved by the common council September 12, 1893:

SECTION 1. Subject to all the provisions and requirements of an ordinance entitled, "An ordinance to authorize the Highland Park Railway Company, its successors and assigns, a body corporate, organized under the laws of the State of Michigan, to construct, maintain and operate a railway on Woodward avenue, between the railroad crossing and the northern city limits," approved July 13, 1886, being chapter 132 of the Revised Ordinances of the City of Detroit for the Year 1890, and subject to all the provisions and requirements of all ordinances of said city of Detroit with reference to street railways, the Highland Park Railway Company is hereby granted permission and authority to construct, maintain and operate its single-track or double-track railway in and along Woodward avenue, from the present southerly terminus of said railway at the northerly side of the railroad crossing, southerly over and across the right of way of the Michigan Central Railroad Company, the Grand Trunk railway, and Lake Shore & Michigan Southern railway, the Belt Line railroad, so as to connect with the railway tracks in said Woodward avenue on the southerly side of said railway premises.

126 SECTION 2. The said extension of railway tracks shall be constructed under the supervision of the board of public works and in such manner as shall be approved by them, and when so constructed, shall be and become a part of the railway of said Highland Park Railway Company, and subject to all the terms and provisions of the ordinances relating thereto; provided, that in case of the grade of the railway tracks and said Woodward avenue shall be separated, then the said Highland Park Railway Company shall immediately cause the tracks hereby authorized to conform to said newly established grade, and waives all damages caused by said change of grade.

SECTION 3. This ordinance shall be of no effect unless the said grantee shall, within ten days, file a written acceptance of its terms and conditions.

SECTION 4. This ordinance shall take immediate effect.

Fort Wayne and Elmwood Railway Company.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council January 31, 1865:

Whereas, Frederick Buhl, John P. Clark, Eber Ward, their associates, successors and assigns, propose to organize a body politic and corporate, under the "Act to provide for the construction of train railways," approved February 13, 1855 (Laws of 1855, p. 338), and act or acts amendatory thereto, for the purpose of constructing and

operating through the streets of the city of Detroit a street railway, to be known as the "Fort Street and Elmwood Avenue railway;" therefore,

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby
127 given, granted and duly vested in Frederick Buhl and his associates, who may be approved by the common council, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay a single or a double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SECTION 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate a street railway, as herein provided, upon the following route: Commencing at the present westerly limits of the city of Detroit, where Fort street touches and intersects said westerly limits; thence easterly through Fort street to Woodward avenue, and along the southerly side of Michigan avenue to Randolph street; thence up Randolph street, and from said Randolph street to Elmwood avenue through Croghan street the whole distance to said Elmwood avenue: Provided, said street can be opened without expense to the city; otherwise through Croghan street to St. Aubin street; and thence through St. Aubin street to Clinton avenue; and thence through Clinton avenue to Elmwood avenue; and thence through said Elmwood avenue to the gate of Elmwood cemetary. If the city of Detroit pave Croghan street contemporaneously with the laying of tracks on said street, said railway company shall pave their track on said street, and two feet four inches on either side thereof, at their own expense. (As amended March 3, 1865.)

128 SECTION 3. The railway through said streets shall be laid in the center thereof, if on a single track, and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space of at least eighteen inches, and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels: Provided however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first: And, provided further, that in all streets which are not paved, or where plank roads are laid, the track of said railway may be laid elsewhere than in the center thereof, as may be most convenient under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any

time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, the consent of the common council is first obtained.

SECTION 4. The track of said railway shall be laid of such rails as are now laid in Woodward avenue, and as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grade thereof as now established or as they shall from time to time, be established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets or parts of streets, which are not paved, the rails shall
129 be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and *im*proved by the city engineer. The grantees and their assigns shall be required to keep the surface of the streets inside the rails, and for two feet four inches outside thereof in good order and repair, and all snow, ice, dirt and filth cleared and removed from the same, in such manner as will not obstruct the passage of said streets, at the expense of the grantees: Provided, however, that upon the paved portions of said streets, the materials for repaving shall be supplied at the expense of the city.

SECTION 5. The route of said railway shall commence at that point on Fort street where said street intersects the westerly limits of the city of Detroit; from thence running to Elmwood avenue, on the course set forth in section two of this ordinance; and in collecting fare, the whole of said distance shall be deemed but one route; and each passenger traveling the same continuously over the whole or any portion thereof, shall pay only one fare, the amount of which fare shall be five cents.

SECTION 6. Said railway shall be completed from the western limits of the city to Woodward avenue, on or before the first day of August, A. D. 1865, and the remainder thereof, from Woodward avenue to Elmwood avenue, on or before the twentieth day of August, A. D. 1866: Provided, however, that the said railway shall be completed from Woodward avenue to St. Aubin avenue, upon the route designated in said ordinance, on or before the first day of July, A. D. 1866. (As amended June 16, 1866, and August 13, 1866.)

130 SECTION 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe: Provided, always, that said council will not require them to run regular cars oftener than once in fifteen minutes, during sixteen hours every day, from the fifteenth day of April to the fifteenth day of October, and fourteen hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; and the cars and carriages for that purpose shall

be of the best style in use on said railways: Provided, that other cars and carriages may be used for constructing and repairing said railway tracks, and for cleaning the same from obstructions by snow or otherwise.

SECTION 8. The rate of fare for any distance shall not exceed five cents in any one car, on said route, except when cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of the preceding section.

SECTION 9. Cars drawn in the same direction shall not approach within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

SECTION 10. No cars shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SECTION 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the
131 cars shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 12. The grantees or their assigns, shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road; and it shall be the duty of all such agents, conductors and drivers, to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it. At the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest space and time possible; and the drivers shall be provided with a whistle for the purpose of sounding the alarm in case of danger.

SECTION 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SECTION 14. Conductors shall announce to passengers the names of the principal squar-s and streets as the cars reach them.

SECTION 15. The cars shall at all times be entitled to the track, and any vehicles upon the track shall turn out when any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding ten dollars, on conviction before the recorder's court of the city of Detroit; but costs and prosecution shall not be at the expense of the city: Provided, however, that the steam fire-engines shall always have the right of the track on unpaved streets, when going to a fire.

SECTION 16. The cars after sunset shall be provided with colored signal lights—a red light in front, and a green light in rear.

132 SECTION 17. Wherever gas or water pipes or sewers are now laid in the streets herein specified, and through which said railway is to pass, the said railway must be laid down and maintained, subject to the right now in the city, and the gas company and the board of public works to take up and remove said pipes and sewers in such a manner as not unnecessarily to damage or injure said railway or its use, without claim against said city, gas

company or board of public works; and the common council expressly reserves to itself the right hereafter to lay down or permit to be laid down, and repaired in said streets, whenever the common council shall so direct by resolution; the said gas or water companies, or private individuals, who shall take up pavement for the purpose aforesaid, being always required as by the present city ordinance, to restore the pavement in the streets to its former condition.

SECTION 18. If said grantee or their assigns, shall fail to complete said railway, or any part thereof, within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to the whole of said route herein established, and the city shall be entitled to take possession thereof, provided the council does not extend the time: Provided, that if said grantees shall be delayed by the order or injunction of any court, and said order and injunction shall not have been obtained at the instance or by the connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SECTION 19. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to pro-
133 tect the interest, safety, welfare or accommodation of the public in relation to said railways,

SECTION 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

SECTION 21. Said grantees shall, on or before the first day of March, A. D. 1865, deposit with the controller of said city the sum of five thousand dollars in money or in United States stocks, or in Treasury notes bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion of said grantees of said line of railway, which they are required to construct and complete on or before the time herein mentioned for the completion of the same, and if the said railway shall not then be completed the sum so deposited shall be forfeited to the city.

SECTION 22. The said grantees and their assigns shall pay to the treasurer of the city of Detroit, annually, twenty-five dollars on each and every passenger and other car, excepting only those cars used for constructing, repairing and cleaning the track on said road, to be collected as a license for the use of the city, after the term of five years from and after this date.

SECTION 23. Whenever said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, and the amendment or amendments thereto, all the powers and privileges granted and conferred to and upon them by this ordinance, shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

SECTION 24. No railway shall hereafter be built on and along

the streets occupied by the railway herein provided for, for a
134 greater distance than three blocks, at any place, without the consent of the grantees and their successors.

SECTION 25. The rails of said street railway shall be laid on a foundation equal to that of Woodward avenue, or any other first-class railroad.

Supplementary Ordinance.

The following ordinance applying to and governing the Fort Wayne & Elmwood Street Railway Company was approved by the common council on June 30, 1880:

SECTION 1. On the first day of July and January in each year from the first day of July, 1880, the Fort Wayne & Elmwood Street Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent., during the period of this ordinance, on the gross receipts collected for fares by the said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 2. On and after the date upon which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all materials and bear the entire expense of excavating, grading, paving, repaving or repairing that portion of the street which lies between the outer rails of their tracks, including the space between all double tracks and switches, and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving or
135 repairing said space to use either cedar blocks or cobblestone or some other similar, durable and proper material, such latter material to be subject to the approval of the common council and all cobblestones or other material now constituting the roadway between the said tracks of the company shall belong to said company, while used for the purpose of paving, repaving and repairing in the place or places where such cobblestones or other material are now or hereafter may be for the first time laid or placed.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges under existing ordinances.

SECTION 3. The powers and privileges conferred and obligations imposed on the Fort Wayne & Elmwood Railway Company by the ordinance passed January 31, 1865, and the amendments thereto are hereby extended and limited to thirty years from this date; and it is further agreed and stipulated that the running of cars on any street or any portion thereof will be discontinued temporarily on such occasions as the common council may by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

SECTION 4. This ordinance shall take immediate effect when writ-

ten acceptance of the terms thereof are filed in the office of the city clerk of the city of Detroit by the said Fort Wayne & Elmwood Company; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

SECTION 5. The right to amend or repeal this ordinance, in
136 case of its violation by this company, is expressly reserved.

Extension of Double Track on Fort Street from Fifth Street to Griswold Street.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council June 27, 1885:

SECTION 1. Subject to all and every one of the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Company to lay, extend, construct, use and operate a second or double street railway track on and through Fort street in the city of Detroit from the present terminus of its double tracks near the intersection of Fort and Fifth streets to Griswold street, in the city of Detroit, and the same to keep, maintain and operate thereon street railway cars under, in the manner and subject to the provisions and requirements set forth in chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and the supplementary ordinance therein contained and by this ordinance imposed.

SECTION 2. The second or double track by this ordinance authorized and permitted shall be so laid, constructed and extended on and through said Fort street between the present terminus of the double track of said Fort Wayne & Elmwood Railway Company, near the intersection of Fort and Fifth streets to the intersection of Fort and Griswold streets, on each side of the center of said Fort street, that the inside rail of each of said tracks shall be at such a distance from the center of said Fort street as shall enable two cars to pass on the parallel tracks and leave a space of at least
137 eighteen inches between such cars when passing.

SECTION 3. The said Fort Wayne & Elmwood Street Railway Company shall complete the work of laying, constructing and extending the tracks authorized by this ordinance, and shall have said tracks and its railway between said Fifth and Griswold streets in full operation thereon, on or before the first day of January, 1886, or within six months from the date of the passage of this ordinance.

Extension to Westerly City Limits.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council on July 21, 1886:

SECTION 1. Subject to the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, save and except as the same are by this ordinance changed or modified expressly or by implication, consent, permission and authority is hereby given and granted to the Fort Wayne & Elmwood Railway Company, to lay, construct, extend, use and operate a street railway track with all necessary and convenient switches, side tracks and turnouts in, on and along the center of Fort street, from the intersection of Fort street and Clark avenue, in the city of Detroit, to the intersection of Fort street and the westerly city limits of the city of Detroit, and the same to keep, maintain and operate thereon street railway cars for the term of twenty-four years from the date of the passage of this ordinance.

SECTION 2. The rate of fare for any distance on said Fort
138 Wayne & Elmwood railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car, except when cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of sec. 7 of chapter 99 of the Revised Ordinances of 1884 of the City of Detroit.

SECTION 3. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall run cars for the transportation of passengers and their ordinary baggage between said Clark avenue and the westerly limits of the city of Detroit every half hour for thirteen hours of each day from the first day of May to the first day of November, and every hour for thirteen hours each day from the first day of November to the first day of May of each and every year: Provided, that the said company may be required to run its cars over the extension hereby authorized as often as every fifteen minutes if required by public convenience and the ordinance of the common council.

SECTION 4. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall build, construct and complete the street railway track, and the switches, side tracks and turnouts hereby authorized, and shall have the same in readiness for operation ninety days after the acceptance of this ordinance by said Fort Wayne & Elmwood Railway Company has been filed in the office of the city clerk of the city of Detroit: Provided, that such additional switches and side tracks may be hereafter constructed along the extension of said railway hereby authorized as may be necessary or convenient.

SECTION 5. This ordinance shall take immediate effect when

written acceptance of the terms hereof shall be filed in the
139 office of the city clerk of the city of Detroit by said Fort Wayne & Elmwood Railway Company, and from that date all ordinances and parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Extension of Line and Single Track on Elmwood Avenue and East Lafayette Street to Boulevard.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council December 22, 1886:

SECTION 1. That subject to each and all of the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, and of an ordinance to authorize said company to construct, maintain and operate a double street railway track on certain portions of Fort street, approved June 27, 1885, and of this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use a street railway track, and thereon to maintain and operate street railway cars, upon and along the following avenue and street in the city of Detroit, namely: Commencing at and connecting with the present easterly terminus of the street railway track of said company at the junction of Croghan street and Elmwood avenue, running thence upon and along Elmwood avenue to the intersection of that avenue and Lafayette street, thence along Lafayette street to a point thereon not less than thirty feet nor more than one hundred feet west of the limits of the Boulevard or Frontenac avenue.

140 SECTION 2. That, in addition to the provisions, regulations and requirements mentioned in the preceding section, the consent, permission and authority hereby given and granted are so given and granted, subject to the following conditions and limitations, with which the said company must and shall comply, namely:

1. The street railway track hereby authorized to be laid, constructed and maintained shall be made a single track with suitable and convenient turnouts, side tracks and switches, and shall be laid and maintained in the center of the street.

2. The said company shall complete the work of laying and constructing the street railway tracks hereby authorized, and shall have the same in operation and use within one year after the passage of this ordinance.

3. The street railway track heretofore laid and constructed by said company, under the provisions of the several ordinances mentioned in section 1, and the street railway tracks authorized to be laid and constructed by this ordinance when completed shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof at or within the city limits,

from thence running along the line of said railway, as heretofore, hereby or hereunder established, to the Boulevard or Frontenac avenue; and in collecting fare the whole of said distance shall be considered one route, and each passenger travelling the same continuously, either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents.

SECTION 3. This ordinance shall take immediate effect when the said company shall have filed with the city clerk its written
141 acceptance of the same, and shall execute and deliver to the controller of the city of Detroit a good and sufficient bond to said city in the penal sum of ten thousand dollars, to be approved by the common council, and conditioned for the faithful performance of the conditions and terms of this ordinance.

Relative to Taxation and to Adjust Past Taxes.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council, over the veto of the mayor, January 4, 1887:

SECTION 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved June 30, 1880, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expiration of each half year during the entire period above mentioned, the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to said city treasurer the percentage so found to be due.

SECTION 2. From the first day of July, 1882, to the end of its franchise approved June 30, 1880, said railway shall also pay to the City of Detroit such taxes for municipal purposes as have been up to this date and shall be thereafter levied and assessed upon the lots and parcels of land and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner and shall be payable at the same time as other city taxes on lands.

SECTION 3. In adjusting the amount due under the fore-
142 going sections from the first day of July, 1882, to the thirty-first day of December, 1886, the railway shall be credited with all sums heretofore paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such amount as shall be found to be due forthwith upon its ascertainment: Thereupon all suits and proceedings between the city and the railway shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SECTION 4. The above-mentioned percentage payments and the tax on lands provided for to accrue from January 1, 1887, to the end of the franchise of said railway, are to be paid by said railway, and

received by the city in lieu of and discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been, or may be levied, assessed or imposed under any present or future law of authority.

If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway upon the amount of the percentage payments to become due under this ordinance; and the obligation to make such percentage payments shall be satisfied and discharged to that extent; and, in no event shall said railway be liable to pay under any form of tax, license or charge, any sums in excess of said percentage, and the tax on the lands of said railway as above provided;

Provided, however, that nothing herein contained shall be construed as a consent on the part of the Fort Wayne & Elmwood Railway Company to the levying or collecting of any other or further tax, license or charge than the tax on the gross receipts here-
143 inbefore provided for and the tax on its lands as hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of said Fort Wayne & Elmwood Railway Company.

SECTION 5. Subject to the provisions of this ordinance, which are only intended to change the ordinance of June 30, 1880, as to the percentage on gross receipts and to modify existing ordinances in reference to the charges by taxation and percentage on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

SECTION 6. This ordinance shall take effect when the Fort Wayne & Elmwood Railway Company has filed its written acceptance of the same with the city clerk.

Spur Track on East Lafayette Street.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved January 10, 1887:

SECTION 1. Subject to the existing provisions and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit, 1884, and of the supplementary ordinance in said chapter contained and all amendatory ordinances thereto, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, use and operate a single street railway track in East Lafayette street, in the city of Detroit, from a point one hundred and ten feet east of the east line of Randolph street to and so as to connect with the track of said company on Randolph street, the curve of said track at the intersection of said streets to run in a southerly direction.

144 SECTION 2. The right to amend or repeal this ordinance is hereby reserved.

SECTION 3. This ordinance shall take effect when the said railway

company shall have filed with the city clerk its written acceptance of the terms thereof.

Extension of Line on Champlain Street to Easterly City Limits.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved August 20, 1888:

SECTION 1. That, subject to each and all of the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, and of all ordinances amendatory thereof, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use a street railway track thereon, to maintain and operate street railway cars upon and along the following avenue and street in the city of Detroit, namely: Commencing at and connecting with the present easterly terminus of the street railway track of said company near the junction of Champlain street and the Boulevard, and running thence easterly upon and along Champlain street to the easterly city limits.

SECTION 2. That, in addition to the provisions, regulations and requirements mentioned in the preceding section, the consent, permission and authority hereby given and granted are so given and granted, subject to the following conditions and limitations,
145 with which the said company must and shall comply, namely:

1. The street railway track hereby authorized to be laid, constructed and maintained shall be made a single track, with suitable and convenient turn-outs, side tracks and switches, and shall be laid and maintained in the center of the street.

2. The said company shall complete the work of laying and constructing the street railway tracks hereby authorized, and shall have the same in operation and use within one year after the passage of this ordinance.

3. The street railway track heretofore laid and constructed by said company under the provisions of the several ordinances mentioned in section 1, and the street railway tracks authorized to be laid and constructed by this ordinance when completed shall be deemed one railway, and the route of such railway shall commence at either of the western termini thereof or within the city limits, from thence running along the line of said railway, as heretofore, hereby or hereunder established, to the easterly city limits; and in collecting fare the whole of said distance shall be deemed one route, and each passenger travelling the same continuously, either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents.

SECTION 4. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall execute and deliver to the controller of the city of Detroit a good and sufficient bond to the city in the sum of ten thousand dollars, to be approved by the common council, and con-

ditioned for the faithful performance of the terms and condi-
146 tions of this ordinance: Provided, that such acceptance and bond shall be filed within thirty days after the passage of this ordinance.

Champlain Street and East Fort Street Lines.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council January 3, 1889:

SECTION 1. Subject to the ordinances of Detroit, now in force relative to the Fort Wayne & Elmwood Railway Company, except so far as they may be modified by this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use street railway tracks, and thereon to maintain and operate street railway cars, upon and along the following streets, avenues and places in the city of Detroit, namely:

Commencing at and connecting with the railway track of said company at the junction of Woodward avenue and Fort street, running thence along and on the Campus Martius to the north part of Cadillac square; thence along and upon the north part of Cadillac square to Bates street, thence upon and along Bates street to the railway track of said company on Randolph street.

Also, commencing at and connecting with the railway track of said company at the junction of Randolph and Champlain streets, running thence upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Mt. Elliott avenue, running thence upon and along Mt. Elliott avenue
147 to Fort street, thence upon and along Fort street to Baldwin avenue, thence upon and along Baldwin avenue to Champlain street, there connecting with the railway track of said company to be built on said street.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Helen avenue, running thence upon and along Helen avenue to Jefferson avenue; thence, with the consent of the Detroit City railway first obtained, upon the tracks of the Detroit City railway upon and along Jefferson avenue to the junction of Jefferson and Frontenac avenues; thence to a point at a convenient distance from the Belle Isle Park bridge, to be fixed by the board of public works.

Also an additional track on Champlain street from Elmwood avenue to Mt. Elliott.

SECTION 2. All of the railway tracks hereby authorized to be laid and maintained shall be laid and maintained in the center of the street or avenue, except upon and along the Campus Martius and Champlain street, wherein the location of said tracks shall be established by the board of public works, who are hereby authorized and

required to determine the line or location of such tracks upon and along the Campus Martius and Champlain street as shall in their judgment be deemed best for the public convenience, and at the same time secure to said company the full enjoyment of the rights and privileges hereby granted.

SECTION 3. The lines of street railway hereby authorized shall be single-track roads, with turnouts, side tracks or switches, except upon Champlain street, between Elmwood avenue and Mt. Elliott avenue, where an additional track is authorized (but without side tracks, turnouts or switches), and on Helen avenue and be-
148 tween Jefferson avenue and the Belle Isle Park bridge, where the railway shall be a single-track road with suitable and convenient side tracks, turnouts and switches. All side tracks, turnouts and switches shall be removed from Croghan street, from Randolph street to McDougal avenue, those remaining to be used only for the private convenience of said company, and the street railway on Croghan street shall be made and continue a single-track road, without side tracks, turnouts or switches, except as above provided.

SECTION 4. The said company shall complete the work of laying and constructing the railway tracks hereby authorized and shall have the same in operation within one year after the passage of this ordinance: Provided, however, that the railway track upon and along Fort street, between Mt. Elliott and Baldwin avenues, shall be laid, constructed and in use within one year after that portion of Fort street shall be open for public use.

SECTION 5. The street railway tracks heretofore laid and constructed by said company under the provisions of the ordinance mentioned in section 1, and the street railway tracks authorized to be laid by this ordinance, shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof, at or within the city limits, from thence running along the lines of said railway, as hereinbefore and hereby established, to the eastern termini thereof, and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously either way over the whole or any portion thereof, shall pay only one fare, the amount of which shall not exceed five cents: Provided, however, that said company shall issue and sell tickets at the rate of eight tickets for twenty-five cents, said
149 tickets to be good for transportation over the entire route of said company, or any portion thereof, traveled continuously either way, between the hours of 5.30 and 7 o'clock a. m. and 5.15 and 6.15 p. m., each ticket to be good for one fare, and this proviso to become operative within sixty days after the passage of this ordinance.

SECTION 6. The said company is hereby authorized to use in operating its street railway, electricity or any proper or suitable motive power used by any other street railway company now or hereafter organized and operating in the city of Detroit, subject, however, to the same conditions and limitations. The said company shall run its cars at the average rate of speed of not less than six miles per

hour, nor more than ten miles per hour, unless otherwise required by the common council.

SECTION 7. The said company shall have the right to run and operate its street railway cars across Belle Isle Park bridge whenever any other street railway company shall be granted the right so to do, with the same conditions and priveleges as shall be accorded to such other company.

SECTION 8. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall have executed and delivered to the city of Detroit a good and sufficient bond in the penal sum of twenty thousand dollars ($20,000), to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance.

Double Track on Fort Street West from Clark Avenue to City Limits.

The following ordinance, applying to and governing the
150 Fort Wayne & Elmwood Railway Company, was approved by the common council September 1, 1891:

SECTION 1. That, subject to the provisions and requirements of existing ordinances, and such additions and amendments as may be made thereto, *that* consent, permission and authority be and the same *is* hereby given to the Fort Wayne and Elmwood Railway Company to lay, construct and maintain a double track on Fort street, west from Clark avenue to the westerly city limits, said track to be laid contemporaneously with the paving of said street, and the expense of paving the portions of said street between the outer rails of said track be paid by said company. In case the foundation of the pavement in the remainder of the street is concrete, then the pavement between the outer rails shall have a concrete foundation, and the material of which the surface is paved shall be of the same character as that used in the adjacent portion of the street.

SECTION 2. This ordinance shall take immediate effect.

Double Track on Champlain Street.

The following ordinance, applying to and governing the Fort Wayne & Belle Isle Railway Company, was approved by the common council on August 15, 1892:

SECTION 1. Subject to the provisions and requirements of existing ordinances and such amendments and additions as may be made thereto, consent, permission and authority be and the same *is* hereby given to the Fort Wayne & Belle Isle Railway Company to lay, construct and maintain a double track on Champlain street, from Mt. Elliott avenue to Baldwin avenue, said track to be laid contemporaneously with the pavement of said street and the expense of paving the portions of said street between the outer rails to be paid by the company.

151 SECTION 2. The right to amend or repeal this ordinance in case of its violation by said company is expressly reserved.

SECTION 3. This ordinance shall take effect when the said railway company shall have filed with the city clerk its written acceptance of the terms thereof.

Sale of Certain Tickets on Cars.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council February 4, 1893:

Whereas, section XIX of chapter 110 of the Revised Ordinances of the City of Detroit for the Year 1890, being section 5 of an ordinance approved January 31st, 1865, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interest, welfare and accommodation of the public in relation to the Fort Wayne & Belle Isle Railway Company, is reserved to the common council of the city of Detroit; and

Whereas, section V of an ordinance approved January 3, 1889, with reference to said railway, being a part of chapter 110 of the Revised Ordinances for the Year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight tickets for twenty-five cents, to be good for transportation between certain hours each day, it is hereby ordained by the people of the city of Detroit:

SECTION 1. It shall be the duty of the Fort Wayne & Elmwood Railway Company, its successors and assigns, to furnish the conductors of each and every car operated by the said company within the limits of the city of Detroit with tickets to be good for
152 transportation between the hours of 5.30 and 7 o'clock a. m. and 5.15 and 6.15 p. m., each ticket to be good for transportation as provided for in said ordinance. (As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall neglect to provide tickets for sale to those who shall apply as provided herein, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine and costs, when imposed, shall be recovered from the person or corporation so convicted by an action at law in the proper court.

SECTION 5. This ordinance shall take immediate effect.

153 United States Circuit Court for the Eastern District of Michigan, Southern Division. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY
vs.
CITY OF DETROIT ET AL. } No. 3631.

Stipulation.

On account of the engagements of court and counsel, it is hereby stipulated and agreed that the hearing of the motion for injunction in the above-entitled cause may be set for the twenty-third instant instead of the twenty-fifth.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitor for Complainant.
CHAS. FLOWERS, *Solicitor for Defendants.*
T. E. TARSNEY, *Of Counsel.*

Filed in the clerk's office September 20, 1899.
WALTER S. HARSHA, *Clerk.*

154 *Motion for Preliminary Injunction Argued in Part.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Saturday, the twenty-third day of September, in the year one thousand eight hundred and ninety-nine.

Present: The Hon. Henry H. Swan, district judge.

DETROIT CITIZENS' STREET RAILWAY COMPANY
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel. } In Equity. No. 3631.

In this cause a motion by the complainant for a preliminary injunction is argued by counsel in part.

155 *Motion for Preliminary Injunction Further Argued and Submitted.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the twenty-fifth day of September, in the year one thousand eight hundred and ninety-nine.

Present: The Hon. Henry H. Swan, district judge.

DETROIT CITIZENS' STREET RAILWAY COMPANY
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel. } In Equity. No. 3631.

In this cause, complainant's motion for a preliminary injunction is further argued by counsel for respective parties and submitted.

156 *Motion by Defendant to Vacate Restraining Order Denied, with Order for Injunction, &c.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the nineteenth day of March, in the year one thousand nine hundred.

Present: The Hon. Henry H. Swan, district judge.

DETROIT CITIZENS' STREET RAILWAY COMPANY
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel. } In Equity. No. 3631.

In this cause, a motion by defendants to vacate restraining order, heretofore argued by counsel and submitted after mature deliberation thereon, *it* is by the court now here denied.

And it is ordered that an injunction do forthwith issue against the enforcement of the ordinance of August 16, 1899, referred to in the bill of complaint herein.

157 The Circuit Court of the United States for the Eastern District of Michigan, Southern Division.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY
vs.
THE CITY OF DETROIT ET AL. } No. 3631.

Messrs. Brennan, Donnelly & Van de Mark, Henry M. Duffield, and Fred A. Baker for complainant.

Charles Flowers, T. E. Tarsney, and Jasper C. Gates for defendants.

The complainant in this cause is a street railway corporation, organized in September, 1891, under an act of the legislature of Michigan approved March 5, 1867, entitled "An act to provide for the formation of street railway companies" (chapt. 95, Howell's Ann.

Stats. of Mich.). Sections 13, 14, and 20 of the act provide as follows:

"SEC. 13. Any street railway corporation organized under the provisions of this act may, with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent, but no such railway company shall construct any railway in the streets of any city or village
158 until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township."

"SEC. 14. After any such village or township shall have consented as in this act provided, to the construction and maintenance of any street railways therein or granted any rights and privileges to any such company and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred."

"SEC. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road shall be established by agreement between such companies and the co-operation of the authorities of the city, or village where the road is located and shall not be increased without the consent of such authorities."

The bill charges the violation by the defendant of the rights acquired by complainant and its predecessors and assignors under the acts of 1855 and 1867. A brief recital of the rights and privileges accorded to these several lines of street railway is necessary.

November 24, 1862, the City of Detroit entered into a contract with Eben N. Wilcox and his associates, successors, and assigns, whereby said Wilcox and his associates organized into a corporation under the train railway law (chap. 94, Howell's Ann. Stats. of Michigan) and were authorized and empowered to construct, equip, and maintain and use single or double track railways with all necessary and convenient tracks, etc., in, along, and through certain streets, avenues, and public places in the city of Detroit and to operate thereon railway cars and carriages. This contract was adopted by the common council in the form of an ordinance, which was accepted by the grantees therein named, who were
159 duly organized into a corporation by the name of the "Detroit City railway." The grantee duly accepted said ordinance,

performed all the terms and conditions thereof, and constructed and put in operation the railway thereby authorized, and has since maintained and operated thereunder lines of street railway upon Jefferson, Woodward, Gratiot, and Michigan avenues, in the city of Detroit. Amendatory and supplemental ordinances granted to said Detroit City railway like rights and privileges in other streets and avenues upon which lines of railway were constructed and have ever since been operated under the terms of said original and supplementary ordinances. These latter lines were built and operated on Brush, Trumbull, Chene, East Fort, and other streets in the city. The ordinance of November 24, 1862, provided in section 23 thereof as follows:

"The rate of fare for any distance, shall not exceed five cents on any one car or on any one route named in this ordinance except where cars or carriages shall be chartered for specific purposes, provided that cars so chartered shall not be considered regular cars within the meaning of the preceding section."

By section 5 of said ordinance it was provided that:

"The routes of all of said railways shall commence in the Woodward Avenue road at the Campus Martius from thence running on their several courses to the outer limits of the city, provided, that in collecting fares those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue and between Brush and Beaubien on Third streets on Jefferson avenue and Woodbridge streets, shall be respectively deemed to belong to either of the above routes, any portion of which is then being travelled continuously by any one passenger at the same time, shall pay only one fare."

That is, that the lines of each of said avenues, to wit, Jefferson, Gratiot, Michigan, and Woodward avenues, should each be considered a separate route. The lines on Brush street and Trum-
160 bull avenue were maintained and operated each as a separate route, and it is the claim of complainant that under said ordinance the Detroit City Railway Company and complainant, as its grantee and successor, became entitled to exact and collect from each passenger taking passage on any one of the routes named the full fare of five cents for a single ride in any direction from any portion of the road on which he took passage, and such passenger was not entitled to have or receive from the railway company in consideration of his payment of said fare of five cents any transfer ticket or other contract, or have the right to a free ride over any one of the other routes of the company, or to a ride over more than a portion of any one of said routes, or to be transferred to or carried over any portion of any other route without the payment of additional fare. By an ordinance of the city of Detroit approved January 3, 1889, and duly accepted by the Detroit City Railway Company, authority was given to said company to construct and operate lines of street railway in, along, and through Fort street east, Mack street, Chene street, and Cass avenue, and to connect its lines on Michigan avenue with the Monroe & Gratiot Avenue lines. All of these several lines, excepting that on Cass avenue, have been con-

structed and are now owned and operated by complainant under ordinances of the city of Detroit accepted in writing by the complainant and its predecessors.

By section 4 of said ordinance of January 3, 1889, it was enacted that:

"SEC. 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit City railway, but the permission and authority hereby given
161 shall be inoperative and void unless the said Detroit railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance in which the said company shall agree to do and perform the following with reference thereto:

(a.) It shall carry passengers over its Cass Avenue and Third Street, Trumbull Avenue and Michigan Avenue and Congress and Baker Street lines to any point on the proposed line on Fort street east or the easterly terminus thereof for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east or from any point thereon to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and other street lines for a single fare of five cents for one continuous trip."

Other lines of railway had been constructed from time to time and put in operation by the complainant's predecessors in ownership under the authority of the common council, all of which, with those above named, have been acquired and are operated by the complainant. The ordinances which authorized the several lines have been amended by the joint action and consent of the common council and the railway companies, apparently in consideration of mutual concessions and undertakings of the contracting parties. The principal changes effected by these amendments were the privilege of transfer over various lines to a passenger paying a single fare of five cents and the company's consent to sell eight workingmen's tickets, so called, good during specified hours, for twenty-five cents. Aside from these modifications, which were prices paid by the railway companies for extensions and changes in their lines and extensions of the term of their easements in the streets of the city and other rights and privileges, the rate of fare established by the agreement of the city and the companies was and has been from the first uniformly five cents, which was prescribed by the ordinances and accepted by the grantees, as appears in the munic-
162 ipal legislat*ure* declaring the terms and conditions on which the city's consent to the use of its streets was granted and accepted by the grantees. These several ordinances contain differences of expression, but none of substance or meaning.

The first ordinance, that of November 24, 1862, by section 8, provides: "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance." * * *

That of January 31, 1865, to the Fort Street & Elmwood Avenue railway, the name of which is now the Fort Wayne & Belle Isle

Railway Company, by section 8, provides: "The rate of fare for any distance shall not exceed five cents in any one car on said route, etc." * * *

The ordinance of January 3, 1889, authorizing the Detroit City railway to construct and operate the street railways designated as the East Fort Street line, Chene Street line, Cass Avenue extension, and Mack Street line, and to lay double tracks on Jefferson and Gratiot avenues, by section 4, provides: "That the above-mentioned lines shall be operated in connection with and as part of the present system of the Detroit City railway." * * *

And further: "Shall carry passengers from its Cass Avenue, Third Street, Trumbull Avenue, Michigan Avenue and Congress & Baker Street lines to any point on the proposed line on Fort street east or to the easterly terminus thereof, for a single fare of five cents for one continuous trip" and a like fare is prescribed for travel on other of the lines authorized.

The ordinance of May 1, 1868, granting the right to the Grand River Street Railway Company to construct and operate its
163 street railway in specified streets of the city, by section 6, provides:

"The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance, except etc." * * *

June 27, 1885, the common council, by ordinance of that date, authorized the Grand River Street Railway Company to construct and operate a railway track, etc., on Myrtle street, which ordinance, by section 2, defined the limits of the railway, and declared: "The rate of fare over such route shall be five cents."

January 3, 1889, the common council passed an ordinance authorizing the Grand River Street Railway Company to construct the Crawford Street and East Congress Street lines, and by section 3 thereof the Grand River Street Railway Company was required "to file a stipulation or agreement in writing by the terms of which, it shall agree to carry passengers from the westerly terminus of its line on Myrtle street and Grand River avenue, to the northerly terminus of its line on Crawford street on any point on any of its said lines to any point on its line on Congress street east, or to the terminus thereof, for a single fare of five cents for one continuous trip," and also fixed the fare for a continuous trip to any other point on its lines "for a single fare of five cents for one continuous trip." This ordinance also required the grantee to issue and sell tickets at the rate of eight tickets for twenty-five cents, to be good for transportation over the entire route of said company or any portion thereof, travelled continuously either way, between specified hours of the morning and afternoon.

The ordinance approved October 14, 1892, authorizing the Detroit Citizens' Street Railway Company to construct and
164 operate additional tracks on Griswold, Woodward, and Atwater streets as part of the system of railways authorized by the ordinance approved May 1, 1868, practically fixed the same rate

of fare by requiring these railways to be operated as part of the Grand River Avenue system.

The ordinance of June 13, 1873, empowered the Detroit & Grand Trunk Junction Street Railway Company to construct and operate its railway over Mt. Elliott avenue, through Congress and other streets, to the westerly limits of the city, and by section 12 enacted that "passengers conveyed upon said railway in said city, shall be charged no more than five cents for any distance." The rights granted under this last ordinance were prior to July 14, 1879, assigned to the Congress & Baker Street Railway Companies.

The ordinance of June 16, 1875, authorized the Central Market, Cass Avenue and Third Street railway to construct and operate its railway from Jefferson avenue through specified streets to the Holden road, and also upon other streets in the city. Section 12 provided: "Passengers conveyed upon said railway in said city, be charged no more than five cents for any distance." The grantee assigned its rights and property to the Cass Avenue Railway Company prior to November 14, 1879, and the latter company, June 22, 1882, transferred the same to the Detroit City Railway Company.

The ordinance of April 17, 1886, authorized the construction and operation of the Dix Avenue railway, and by section 6 provided: "The rate of fare for a single trip, shall not exceed five cents for any distance within the city limits."

165 The Highland Park railway was authorized by the ordinance of July 13, 1886, to construct and operate a track along Woodward avenue between the railroad crossing and the northerly city limits, and by section 5 it was provided: "The rate of fare for a single trip, shall not exceed five cents for any distance within the city limits."

By the ordinance of July 24, 1886, the Fort Wayne & Elmwood Railway Company was authorized to construct and operate its railway along Fort street from its intersection with Clark avenue to the intersection of Fort street and the westerly limits. Section 2 of the ordinance enacted:

"The rate of fare for any distance on said Fort Wayne & Elmwood railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car, except, etc." * * *

December 22, 1886, the common council passed an ordinance granting the same company the right to construct and operate its railway on Elmwood avenue and East Lafayette street to the Boulevard, declaring the original lines and the extension granted one railway, and that "Each passenger travelling the same continuously either way over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents."

The ordinance of January 3, 1889, authorized the Fort Wayne & Elmwood Street Railway Company to construct and operate its railway upon certain specified streets additional to its original grant, and declared that the railways thereby authorized should be deemed one railway, and "Each passenger travelling the same continuously either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall not exceed five cents." A

proviso required the company to issue and sell tickets at the
166 rate of eight for twenty-five cents, to be good for transportation over the entire route of said company during specified hours.

The Detroit railway was authorized by the ordinance approved December 4, 1894, to construct and operate a street railway upon specified streets and avenues in the city, the grant covering several routes. Section 10 of the ordinance provides: "The rate of fare for a single ride for a continuous trip any distance in one direction over any one of the routes hereinbefore described, shall be five cents," for which the passenger is entitled to such ride and to a ticket or transfer check good for a ride over any other line or road operated by said grantees, their associates and assigns, if presented within a certain time. It also required the grantee to issue and sell packages of eight tickets for twenty-five cents, which ticket would be accepted for fare between certain hours, and entitled the passenger to a transfer for a continuous ride over any other line or route of said grantees.

All these ordinances were accepted in writing by the respective grantees. Other ordinances affecting the street railways were passed by the council between the time of the grants conferred by the city in 1862 and 1865 and the passage of the ordinances of August 17, 1899, but they contain nothing germane to the question involved in this suit, with three exceptions. On the 14th of November, 1879, the common council passed an ordinance making certain requirements from the Detroit City Railway Company, which had become the owner of all the street railways then in operation, excepting the Fort Wayne & Elmwood Railway Company and its extensions and the Grand River Railway Company and its lines. This ordi-
167 nance was the culmination of many differences which had arisen between the city and the Detroit City Railway Company, notably controversies concerning the taxes payable by the railway companies to the city, and was an adjustment of the relations of the city and the company as to the controverted matters. It exacted of the company the extension of certain of its lines, and that its cars on all lines should be operated as the public convenience might require and the common council order. In consideration of the acceptance of this ordinance by the Detroit City Railway Company as a compromise of the differences existing between it and the city, and in view of the expenditure required of the grantee to comply with the demands of the city council, by section 5 of the ordinance it was enacted: "The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty (30) years from this date."

By section 6 the ordinance was made to take immediate effect when written acceptance of the terms thereof *were* filed in the office of the city clerk of Detroit by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company, and the Central Market, Cass Avenue and Third Street Railway Company or their successors, which two latter corporations had assigned their

rights and property to the Detroit City railway, and "from that date, all ordinances or parts of ordinances in conflict with the provisions hereof, shall stand repealed, and all ordinances and parts of ordinances in conflict herewith, shall be affirmed and continued in force."

By section 7 the "right to amend or repeal this ordinance in case of its violation by said company or companies" is expressly
168 reserved. A like ordinance was passed June 30, 1880, giving to the Fort Wayne & Elmwood Street Railway Company (formerly known as the Fort Street and Elmwood Avenue railway) an extension of the powers and privileges conferred upon it under its original corporate name by the ordinance of January 31, 1865, and the amendments thereof for thirty years. This ordinance is apparently identical, *mutatis mutandis*, with that applicable to the Detroit City railway above quoted. These ordinances were accepted in writing by the grantees. Both the city and the railway companies assumed that the easement or franchise in the streets by the ordinances of 1862 and 1865 *were* limited to thirty years. By a similar ordinance approved December 3, 1885, "the powers and privileges conferred and obligations imposed on the Grand River Street Railway Company by the ordinance passed May 31, 1868, and the amendments thereto, are hereby extended and limited to thirty years from and after the first day of January, A. D. 1886." * * * All of the railways named in the bill except the Grand River railway and the Fort Wayne and Belle Isle Railway Company were acquired by the Detroit City Railway Company, which, in September, 1891, sold and conveyed the same, with the rights, easements, or franchises belonging thereto, to complainant, which also acquired, October 1, 1891, all of the rights and property of the Grand River Railway Company (formerly known as the Grand River Street railway), and subsequently became the lessee of the rights, privileges, and property of the Fort Wayne & Belle Isle Railway Company. Since its acquisition of said several lines, as narrated, complainant has lawfully operated and still is so operating the same.

169 The Detroit City railway, the Grand River Street railway, and the Fort Street & Elmwood Avenue railway, as it was first called, were originally incorporated under the train railway act of 1855, chap. 94, How. Ann. Stats., but these companies and all others involved in this case have since been incorporated under the street railway act of 1867, mentioned hereinafter. The act of 1855 up to 1861 contained but thirty-two sections and contemplated only the formation of corporations for the construction and operation of train railways upon and over which any person or company might carry freight in their own vehicles, paying tolls for the use of the track. It was amended Feb. 2, 1861, by adding sections 33 and 34 thereto, which read:

"SEC. 33. It shall be competent for parties to organize companies under this act to construct and operate street railways in and through the streets of any town or city in this State."

"SEC. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them; provided that, no such

company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of said town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

March 27, 1867, the act was again amended by adding to sec. 34 the following as part of that section, namely:

"Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises here granted shall be destroyed or unreasonably impaired or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in said consent or grant named pursuant to the terms thereof."

Section 36, after prescribing what shall be a sufficient des-
170 ignation of the route or routes stated in the articles of association of the company, provides as follows:

"It shall be lawful to build, maintain or extend the railway of such company according to the terms and conditions of such grant or grants." * * *

Section 41 and 42 were enacted April 12th, 1871. The latter provides that "all the provisions of this act as amended, shall be applicable to all corporations now organized under this act as though specifically named."

March 5, 1867, the street railway act of 1867, so called, was passed. It is entitled "An act to provide for the information of street railway companies" and prescribed a complete scheme for the organization of such companies, which would seem to have been designed to displace, if not repeal, former legislation to that end. Sections 13, 14, 15, 19, 20, 29, and 30 of this act are as follows:

"SEC. 13. Any street railway corporation organized under the provisions of this act, may, with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing, the terms and conditions upon which they are permitted to use said streets." * * *

"SEC. 14. After any city, village or township shall have consented as in this act provided, to the construction and maintenance of any street railways therein or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred."

"SEC. 19. The common council or other corporate authorities of the city or village in which any street railway shall be located,
171 may from time to time by ordinance or otherwise, establish and prescribe such rules and regulations in regard to said railway as may be required for the grading, paving and repairing of the streets, and the construction of sewers, drains, reservoirs and crossings and the laying of gas and other pipes upon, in and along the streets traversed by such road and to prevent obstructions thereon."

"SEC. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company and the corporate authorities of the city or village where the road is located and shall not be increased without consent of such authorities."

"SEC. 29. All companies and corporations heretofore organized in this State for the purpose of building, and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

"SEC. 30. All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons or passengers in any city or village shall be organized under the provisions of this act and shall be subject to the provisions of chapter seventy-three (73) of the compiled laws of this State, and to all other general laws of this State, relating to corporations so far as the same may be applicable to corporations formed under this act, and the legislature may alter, amend or repeal this act at any time."

Section 15 authorized any street railway company to—

"Purchase and acquire either at public or private sale or to hire any street railway company in any city, village or township, owned by any other corporation together with the real and personal estate belonging thereto and the rights, privileges and franchises thereof and to use, maintain and complete such road and use and enjoy the rights, privileges and franchises of such company and upon the same terms as the company whose roads and franchises were so acquired, might have been," etc.

It will be noted that when the original grant to the Detroit City railway was re-enacted and extended November 14, 1879, and that to the Fort Wayne & Elmwood Railway Company, subsequently called the Fort Wayne & Belle Isle Railway Company, was re-enacted and extended in 1880, and the original grant to the Grand River Street Railway Company was re-enacted and extended
172 in 1885, the provisions of the street railway act, above quoted, were in force, and by the express terms thereof the grantees, although incorporated under the train railway act, became entitled to the benefit and protection of all provisions of the street railway act. This is true also of the subsequent grants by the city to the various railway companies which are the constituents of complain-

ant's system, including also the Fort Wayne & Belle Isle Railway Company, which it holds by lease.

The charter of the city of Detroit, approved June 7, 1883, sections 121 and 122, clothed the common council with power over the streets, highways, and alleys, to establish, open, widen, extend, straighten, alter, vacate, etc., and generally to control, prescribe, and regulate the manner in which the highways, streets, avenues, lanes, alleys, public grounds, and spaces within said city shall be used and enjoyed."

Section 19 of the ordinance of November 24, 1862, provides:

"It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railways."

The later ordinances granting consents to railways for the occupancy of the street and extensions of easements previously granted contained similar provisions.

The statutes and ordinances from which the foregoing quotations have been made, it is believed, comprise all the legislative and municipal enactments invoked by both parties as declaratory of their respective rights and powers.

August 16, 1899, the common council of Detroit passed five ordinances which the mayor approved, requiring complainant,
173 its successors and assigns, and the railway companies named in said ordinances, "to keep on sale on its cars in service at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by such railway company, its successors or assigns, for a single ride for any distance in either direction over all lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket or on the payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route or within fifteen minutes after such passenger leaves the car on which he received said transfer ticket." The other four ordinances contained a like provision.

It will be seen that these ordinances not only reduced the rate of fare fixed by the original consent ordinances of 1862 and ratified in that of November 14th, 1879, and the other ordinances above recited, and which had been recognized as a lawful rate over each separate route or line ever since the street railway service was introduced, but also required complainant to transfer a passenger free of charge over any other of complainant's lines or routes to which he might request a transfer ticket.

It is the claim of complainant that these ordinances violate its agreements with the city, evidenced by the ordinances granting the consent of the city to the use of the streets by complainant, its grantors and predecessors, and accepted by the latter as the terms and conditions of the easement granted, and impaired the obligation

of its contracts with complainant, its grantors and predecessors, and is null and void. A restraining order was issued, staying the enforcement of the ordinances of August 16th pending the hearing of a motion for a perpetual injunction. No answer to the bill has
174 been made, but defendant has filed certified copies of the various consent ordinances and the amendments thereto, and these copies have been submitted, in connection with the charter of the city and the acts of 1855 and 1867 and the amendments thereto, as the city's answer to the motion for injunction. Both parties concede the jurisdiction of the court under the authority of—

City Railway Co *v.* Citizens' R. R. Co., 166 U. S., 563.
Walla Walla *v.* Walla Water Co., 172 U. S., 1.
Hamilton *v.* Hamilton Gas Light Co., 146 U. S., 158.

SWAN, *J.:*

The controlling question in this case is the effect of the ordinances of consent and their acceptance by the railway companies. These ordinances were enacted under express legislative authority, and conferred on the city authorities, to prescribe the terms and conditions, an easement in the streets should be granted to street railway companies. The constitution of Michigan, section 38 of article 4, provides:

"The legislature may confer upon organized townships, incorporated cities and villages and upon the board of supervisors of the several counties, such powers of a local legislative and administrative character as they may deem proper."

With the two limitations of this broad power, this case has no concern. "Municipal corporations derive their sole source of power from legislative enactments." * * * "The power of a municipality to grant an easement in a street to a street railway is not inherent but is derived from the legislature."

Street Railway Co. *v.* City of Detroit, 110 Mich., 390.
Detroit Citizens' Street Railway Co. *v.* Detroit Railway, 171 U. S., 48.

175 In the exercise of this constitutional power, the legislature gave to the city by the acts of 1855 and of 1867 authority to grant or deny to a railway company the use of its streets for the construction and operation of its railway. The franchise of corporate capacity had been acquired by the railway companies under the laws of the State, and this was all that the legislature had to bestow. It left the acquisition of the easement in the streets to the action of each municipality from which it was sought, and by making it the subject-matter of agreement between the city and the railway company, vested the city with the power to prescribe and the grantee to accept or reject the terms and conditions of consent offered. Both parties had capacity to enter into the contract. The only limitations upon the exercise of that power was that the State required that the city's consent should be evidenced by ordinance, and that the acceptance of the railway company should be in writ-

ing. The fact that the early ordinances gave an exclusive right to the grantee has lost significance by the decisions in—

Street Railway Co. *v.* Detroit, 110 Mich., 384, and
Detroit Citizens' St. R'y Co. *v.* Detroit Railway, 171 U. S., 48.

The acceptance of the terms and conditions of the city's consent and of the obligations imposed upon and the reciprocal undertakings given by the railway company to the city constitute a sufficient consideration and supply all the essentials of a contract. It "constitutes a contractual ordinance conferring an easement which is irrevocable."

176 Mayor of Knoxville *v.* Africa C. C. A., 77 F. R., 508.
Township of Hamtramck *v.* Rapid Railway, 6 Detroit Legal News, 821.
Iron Mountain R. Co. *v.* Memphis, 96 F. R., 128.
Louisville Trust Co. *v.* Cincinnati, 76 F. R., 209 (C. C. A.).
Electric Railway Co. *v.* Grand Rapids, 84 Mich., 257.
Union St. R. Co. *v.* Circuit Judge, 113 Mich., 645, '6.
City Railway Co. *v.* Citizens Co., 166 U. S., 567.

The rule which requires a strict construction of the powers of municipal corporations and the equally familiar principle that all public grants must be strictly construed against the grantee, leaving nothing to inference, find no room for application in this case, for the grant of authority is explicit and unqualified. The legislature expressly reserved to itself in the acts of 1855 and 1867 what the constitution gave it, independent of such reservation, the right to alter, amend or repeal those acts at any time. In the train railway act the affirmation of this power in sec. 31 was thus qualified:

"But such alteration, amendment or repeal shall not operate as an alteration or amendment of the corporate rights of companies formed under it, unless specially named in the act so altering or amending this act." * * *

The legislature has not exercised its constitutional or reserved power in any particular affecting this case, except in the enactment of the second proviso to sec. 34 of the act of 1855, nor has it delegated, even if it could, the power to the city to modify its consent. On the contrary, by the second proviso of sec. 34 of the act of 1855 quoted above, and sec. 14 of the act of 1867, providing that after the consent of a municipality to the use of its streets by a street railway company has been accepted by the latter, "such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred," it has ex-

177 pressly forbidden any impairment of the grant. The force of this prohibition is supplemented by sec. 29 of the same act, giving to street railway companies organized under prior legislation "the same powers, rights, protection and privileges," and subjecting them "to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act." It is plain, therefore, that whatever construction might

have been given to sec. 34 of the act of 1855 prior to the enactment March 27, 1867, of the second proviso thereto, the inviolability of its consent declared by sec. 14 of the act of 1867 was a right and protection acquired under sec. 29 which could not be nullified by a city ordinance.

People *v.* Kirsch, 67 Mich., 539, 543.

In Detroit City Railway *v.* Guthart, 51 Mich., 183, construing sec. 31 of the train railway act referred to, *supra*, Justice Cooley said:

"The rights intended by that section are the essential and important rights of corporations formed for the particular purposes which the act had in view as distinguished from the privileges and immunities which are not so fundamental, but which may nevertheless have value. An attempt to enumerate the rights here would be presumptuous and without value, but, in general terms, it may be said that the franchise to construct and operate a road and to levy and collect remunerative tolls or charges would be corporate rights."

The acts of 1855 and 1867 being *in pari materia*, no reason is perceived why this definition of the word "rights" should not be applied to the same word in sections 34 of the act of 1855 and 14 of the act of 1867.

Reiche *v.* Smythe, 13 Wall., 162.

By section 20 of the act of 1867, as we have seen, the rate of fare was made matter of agreement between "such company and the corporate authorities of the city or village where the road is
178 located," * * * and therefore "when established by agreement," a right vested in the railway company which is protected by sec. 29 of the act of 1867 quoted above, as well as by the Federal Constitution. It is replied to this that section 34 of the act of 1855 was added to that act twenty-two days after the act of 1867 was approved, and must therefore be regarded as the latest expression of the legislative will upon this subject; that under the first proviso to that section prohibiting a railway company from constructing its road in "the streets of any town or city without the consent of the municipal authorities of such town or city and under such regulations and terms and conditions as said authorities may from time to time prescribe," the city was empowered to change the rate of fare. This is not an exact statement of the amendments of sec. 34. All that part of the section preceding its second proviso was added April 12th, 1861. The second proviso that "after said consent shall have been given and accepted by the company or corporation to which the same is granted, such authority shall make no regulation or condition whereby the rights or franchises so granted shall be destroyed or unreasonably impaired or such corporation be deprived of the right of constructing, maintaining, and operating such railway in the streets in such consent or grant named pursuant to the terms thereof" was approved March 27, 1867. Its clear intent, purpose, and effect was to bring the act of 1855 into harmony with that of 1867, but primarily and beyond question to

take from the city the authority, if any it had, to prescribe further regulations and conditions "from time to time," impairing the consent thus granted and its enjoyment "pur-
179 suant to the terms thereof." This is evidenced also by section 36 of the same act, also added March 27th, 1867, by which is provided that: "It shall be a sufficient designation of the route or routes thereof (of a street railway) to declare that said railway is to be constructed and maintained in such streets or public ways of the particular city as has been or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities of such city, and it shall be lawful to build, maintain, or extend the railway of such company according to the terms and conditions of such grant or grants." * * *

The street railway act of 1867, entitled "An act to provide for the organization of street railway companies," was approved March 5th, 1867. While it does not repeal the act of 1855, but is in part *materia*, yet by its 30th section, quoted *supra*, it so far displaced it as to require that all street railway companies thereafter formed should be organized under its provisions. This act is complete in itself and in marked contrast with the heterogeneous provisions of the act of 1855, which for want of a more suitable statute was amended to a lapt it to objects not within its original scope and purpose. The latter act was the product of a more enlightened conception of the character and necessity of the new system of urban passenger transportation, and obviously recognized the impolicy and injustice of subjecting the large investments of capital needed for such enterprises to the caprice of fluctuating municipal bodies. By leaving to the city or village authorities the right to give or withhold consent to the use of its streets by such railways "under such rules, regulations, and conditions as the local authorities might impose," it enabled municipalities to protect themselves by the ordi-
180 nance of consent, and by section 14 secured the protection of the grantee of the servitude by the acceptance of that ordinance as the irrevocable contract of the parties. The justice and necessity of this provision was approved by the same legislature twenty-two days thereafter by adding the second proviso to section 34 of the act of 1855, which, differing in phraseology, is identical inp urpose and effect with section 14 of the later act, and, as has been said, was doubtless enacted to harmonize the two acts, the latter of which was made the only basis for the organization of street railway companies thereafter. The second proviso of section 34 is therefore clearly in confirmation and adoption of the spirit and purpose of secs. 14 and 29 of the act of 1867, not in the least degree detracting from the absolute interdict of section 14 against the revocation of the consent granted. It does not profess to amend or repeal any part of the act of 1867 or to qualify the rights it granted or the liabilities it imposed. This conclusion is confirmed by the fact that the amendment of 1867 to section 34 of the act of 1855 was made by proviso, "the general purpose of which is to except the clause covered by it from the general provisions of a statute

of some provisions of it or to qualify the operation of the statute in some particular."

George Banking Co. *v.* Smith, 128 U. S., 181, or as said in Wyman *v.* Southard, 10 Wheat., 1, 30.

"The proviso is generally intended to restrain the enacting clause and to except something which would otherwise have been within it or in some measure to modify the enacting clause."

181 Both provisos to section 34 were evidently made with this intent. The first modified the broad grant of authority to street railway companies to use and operate street railways by making the consent of the city or village, under such regulations, terms, and conditions as its authorities might "from time to time prescribe," a condition precedent to the use and operation of such railways in the streets of a municipality. The second proviso modified all that preceded it in the section by prohibiting impairment of the rights and franchises named in the accepted grant or deprivation of the right of constructing, maintaining, and operating such railway in the streets in the consent named, "pursuant to the terms thereof" (of the consent). Prior to the enactment of the second proviso the city had never exercised or claimed the power to vary its consent in any degree or particular. That it was competent for the legislature to withdraw from the city the apparent authority to prescribe further terms and conditions to its consent "from time to time" is unquestionable.

Board of Park Com'rs *v.* Common Council, 28 Mich., 239.
New Orleans *v.* N. O. Water Works Co., 142 U. S., 91.

The city and the railway companies have ever since the original ordinances practically and uniformly construed the consents as controlling their mutual rights and obligations, except in those particulars in which they have been changed with the consent of both parties. What the railway companies have consent to do by such modifications as have been made furnishes no measure of its rights under the consents, or sanctions their impairment.

Lake Shore R'y Co. *v.* Smith, 173 U. S., 684, 697.
Highland Park *v.* Plank Road Co., 95 Mich., 489, 491.

182 With full knowledge of their provisions, twelve years after the enactment of the second proviso and the act of 1867, the city authorities also expressly renewed and ratified these ordinances and their acceptance as the lawful agreement of the city and companies. The rights of the parties must be measured by the law as it now stands and by their agreements thereunder.

By the ordinance of November 14th, 1879, sec. 5, "the powers and privileges conferred or obligations imposed on the Detroit City railway by the ordinance of November 24 and the amendments thereto are hereby extended and limited to thirty years from this date." By the ordinance of June 30th, 1880, a like proviso was made relative to the Fort Wayne & Elmwood Street Railway Company (later known as the Fort Wayne & Belle Isle Railway Com-

pany), confirming and extending for thirty years its grant under the ordinance of January 31st, 1865. Like ordinances were passed in favor of other lines. The practical construction given by the parties to their agreement prior to November 14th, 1879, ever since the enactment of the second proviso of sec. 34 of the act of 1855 and the act of 1867, a period of 37 years, is a fair standard in itself of their rights thereunder—Chicago *v.* Sheldon, 9 Wall., 50–54—and when supplemented and adopted by these confirmatory ordinances, which the statute authorized, the fact that the original ordinances antedated the second proviso of section 34 is a matter of no moment. The act of 1867 and the second proviso of sec. 34 of the act of 1855 should be construed as a ratification of those ordinances.

City Railway Co. *v.* Citizens' R'y Co., 166 U. S., 567, 569.

183 The ordinances of 1879 and 1880 and their acceptance had all the force and effect of a new consent which was authorized by the legislature and protected both by section 34 of the train railway act, as it then stood, and by section 20 of the street railway act of 1867 against destruction or impairment by the municipal authorities, and are sustained by sufficient consideration.

City Railway Co. *v.* Citizens' R. R. Co., 166 U. S., 568.

The argument that it is not claimed in the bill that by a reduction of fares from five to three cents the contract is "unreasonably impaired," and therefore is a "regulation" which the city authorities may lawfully make under section 34 of the act of 1855 and sec. 19 of the original-consent ordinance, is untenable.

"An objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligations."

Green *v.* Biddle, 8 Wheaton, 184.
Walker *v.* Whitehead, 16 Wall., 314.

That the original and subsequent ordinances which are recited above, accepted by the complainant and its assignors, established the right of the street railway companies to a five-cent fare is as clear as that the attempted reduction of that fare by the enactment of the ordinances of August 16, 1899, impaired the obligations of the contract of consent between the city and the companies. It is as idle to claim that the change of rate did not "unreasonably" impair that consent as to deny that the proposed reduction of fares is not

184 the deprivation of the railway company's right of constructing, maintaining, and operating such railway in the streets in such consent or grant named pursuant to the terms thereof. By any change of its terms or any regulation diminishing its value or altering its condition to the prejudice of either party a contract is

"unreasonably" impaired. It is not the degree, but the fact of impairment that determines the validity of legislation affecting it. In the case at bar the "regulation" that the company shall sell eight tickets for twenty-five cents, each of which tickets shall be valid for the carriage of a passenger for whose transportation the company, under its agreement with the city, is authorized to collect five cents is so clearly the deprivation of a right valuable to the company that the effect "goes without saying."

In Detroit *v.* Detroit and Howell Plank Road Co., 43 Mich., 140, 146, it was sought to compel the respondent company to remove two and one-half miles of its road from within the city without compensation and in violation of its chartered rights. The proceedings were taken under the act of the legislature forbidding the company to take tolls on paved roads within said limitations. Justice Campbell said:

"What the city claims a right to do is to deprive the respondent of the privilege any longer to take tolls for travel and traffic on two and one-half miles of its road. If it may do this in respect to one part of the road it may in respect to any other part. If it may exclude the respondent from Detroit it may from Howell also, or from any other township on the line, and a single section of the statute may annihilate the property of respondent altogether. A statute which could have this effect would not be a statute to amend franchises, but a statute to confiscate property. It would not be a statute of regulation, but of spoliation."

A fortiori, as the city derives all its powers from the legislature, which has prohibited its recession from its consent, the at-
185 tempted abrogation of that contract and the deprivation of the rights which it confers is an indefensible usurpation.

The argument that the ordinances of August 16th, 1899, were passed in the exercise of the "police power" of the State by its agent, the city, affords no justification to the defendant. Without attempting to specify what is included in the elastic term "police power," the view taken of the contractual relations of complainant and the city negatives the defense asserted on that ground.

In the language of Mr. Justice Peckham:

"This (the police power) must, however, be exercised in subordination to the provisions of the Federal Constitution. If in the assumed exercise of its police power the legislature of a State directly and plainly violates a provision of the Constitution of the United States, such legislation would be void."

Lake Shore R'y Co. *v.* Smith, 173 U. S., 689, 690.

These ordinances contravene the provisions of the Federal Constitution forbidding the impairment of contracts and the deprivation of property without due process of law, and equally the stat-
186 utes of Michigan, from which alone the city obtained the power to grant its consent unless that consent has reserved the power to modify its terms and conditions. This result necessitates the proposition that the ordinances of August 16th, 1899, are a proper exercise of the powers reserved to the city by section 19 of

the ordinances of consent of 1862 and 1865, and therefore do not impair the contract of the parties. This contention is without merit. That section reserved the power to enact "such further rules, orders, and regulations as may from time to time be deemed necessary to protect the interests, safety, welfare, or accommodation of the public in relation to said railways." Similar sections are contained in the later ordinances granting consent to the construction and operation of the new lines owned by complainant. The terms "further rules, orders, and regulations" for the purposes specified are inapt to express a purpose to vary the "consent, permission, and authority" granted, but are a declaration of the right and purpose of the city authorities to "further" exercise the police power in regard to all matters incident to the construction and operation of the road, such as the location of the tracks in the streets, the placing of switches and turn-tables, the repair of the pavement between the tracks, the removal or limitation of the number of tracks, in the interest of public travel (Grand Rapids Railways, 43 Mich., 433; Baltimore Trust Co., 166 U. S., 673), the frequency with which cars should be run for the public convenience, the stopping of cars at street crossings, the use of fenders, the rate of speed to be maintained, the sale of tickets (City of Detroit *v.* Railway Co., 95 Mich., 456), and generally to details of the conduct and operation of the
187 railway, which experience might show to be necessary, in addition to or in amendment of those specified in the consent, for the protection of life, the accommodation of the public, and the avoidance of injury to private property. Such regulations are not invasions of the contract rights of the company and are just and reasonable. Lake Shore & Mich. Southern Railway Co. *v.* Ohio, 173 U. S., 285, 305. But the right of the grantee to use its franchise in the city and to take the stipulated fare for the carriage of passengers are vested rights of property under the consent and clearly distinguishable from immunity from the duties and requirements necessitated by the new easement and consistent with its full enjoyment and from which even the legislature could not release the grantee.

The entire abolition of fares might for a time conduce in a degree to the material "interest" and "welfare" of the traveling public and be a public "accommodation," but the rule, order, or regulation which would require free transportation of the public would differ only in degree from the ordinances in question, which have no relation to the comfort, safety, or welfare of society.

Cooley's Cons. Lim., p. 577.

People *v.* Jackson Plank Road Co., 9 Mich., 306.

If the city may sequester two-fifths of the grantee's earnings, why may it not take all? Such a power is neither expressly given nor can it be implied. It is confiscation. Besides the considerations already stated, which conclusively repel this defense, — may be added that the canons of statutory construction also exclude it. The rates of fare having been *eo nomine* fixed by one section of each of the many ordinances of consent, and by sec. 20 of the act of
188 1867, are not within the general authority to make "rules, orders, or regulations" committed to the discretion of the

common council by section 19. The general words of that section must yield to the specific provision fixing the rate of fare.

Horner *v.* Collector, 1 Wall., 486, 490.
Reiche *v.* Smythe, 13 Wall., 162, 165.

The same rule of interpretation must be applied to municipal ordinances as obtains in construing statutes. "A thing which is given in particular shall not be taken away by general words."

Churchill *v.* Crease, 5 Bing., 180.

The fundamental principle of construction applicable both to legislative and municipal enactments is that the intention of the legislature is to govern.

Sedgwick on Stats. & Cons. Law, p. 360.
Pease *v.* Whitney, 5 Mass., 380, 382.

It has never been claimed for section 19 and the corresponding sections in all the numerous ordinances of consent passed by the common council that they authorized any interference with the rates of fare prescribed by all the consent ordinances from 1862 to 1899, inclusive. This disclaimer for a period of thirty-seven years also negatives the relation of that section to the subject of fares.

The objection to the validity of the consent ordinances that the common council was without power to grant an easement in its streets for thirty years, and therefore the rate of fares could not be fixed so as to be beyond the control of the city authorities for that period, has been determined adversely to the defendant in Detroit Citizens' Street R'y Co. *v.* City of Detroit, 64 F. R., 628, 646.

189 There is nothing in the charter of the city which sanctions the action of its common council.

The arguments have taken a wide range, and many questions have been presented relative to the power of the legislature to prescribe or change the rates of transportation of railway companies and otherwise alter or amend the organic acts under which they were formed, but those questions are foreign to the issues here involved. While the authorities cited have been carefully examined, nothing has been found which controls the determination of this case.

It follows from what has been said that the motion to vacate the restraining order must be denied, and that the complainant is entitled to an injunction against the enforcement of the ordinance of August 16, 1899, and such injunction will issue accordingly.

HENRY H. SWAN,
District Judge.

Detroit, March 15, 1900.

190 *Injunction.*

The President of the United States to the City of Detroit, William C. Maybury, and Charles Flowers, their agents, solicitors, and servants:

Whereas it has been represented to us in our circuit court of the United States for the eastern district of Michigan, in equity, on the

part of The Detroit Citizens' Street Railway Company, complainant, that it has lately exhibited its bill of complaint against you, the said City of Detroit, William C. Maybury, and Charles Flowers, defendants, to be relieved touching the matters therein complained of, in which bill it is stated, amongst other things, that you are combining and confederating to injure the complainant touching the matters set forth in the said bill, and that you are attempting and intend by means of suits, actions, and otherwise to enforce or attempt to enforce and carry out the provisions of certain pretended ordinances of the common council of the city of Detroit of August 16th, 1899, referred to in the bill of complaint in this cause, and that your actings and doings in the premises are contrary to equity and good conscience:

Now, therefore, we strictly command and enjoin you, the said City of Detroit, William C. Maybury, and Charles Flowers, your attorneys, solicitors, clerks, servants, and agents, under the penalties that may fall on you in case of disobedience, that you forthwith and until the further order of this court desist from directly or indirectly, by means of suits, actions, or otherwise, from enforcing or attempting to enforce or carry out the provisions of all or any of certain pretended ordinances of the common council of the city of Detroit of August 16th, 1899, referred to in the bill of complaint in this cause, copies of which said pretended ordinances are annexed to
191 said bill of complaint, or from enforcing or attempting to enforce or carry out the provisions of any or either of said ordinances or any portion thereof until the further order of this court.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Detroit, on the 29th day of March, A. D. 1900.

WALTER S. HARSHA, *Clerk*,
By ADELAIDE ANDERSON VOORHEIS,
[SEAL.] *Deputy Clerk.*

Filed in the clerk's office April 2, 1900.
WALTER S. HARSHA, *Clerk*.

192 *Answer.*

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor; Charles Flowers, Corporation Counsel, Defendants. } No. 3631.

The Joint and Several Answer of the said Defendants to the Bill of Complaint of said Complainant Herein.

These defendants, now and at all times saving and reserving to themselves all the benefit and advantage of the many errors and

insufficiencies in said complainant's bill of complaint contained, for answer thereto, or unto so much thereof as these defendants are advised that it is material for them to make answer, they answer and say:

1. These defendants admit that the complainant is a street railway corporation, organized as such under and by virtue of the provisions of chapter 95, Howell's Annotated Statutes of Michigan, and that said complainant was incorporated under the provisions of said chapter in September, 1891, and that sections 13, 14, and 20
193 of said chapter 95 of *of* Howell's Statutes are as stated and alleged in the first paragraph of complainant's bill of complaint, but these defendants deny that the provisions of said chapter 95, Howell's Annotated Statutes of Michigan, and of the sections thereof specifically referred to in said first paragraph of said bill of complaint, confers any power or authority upon said complainant in relation to the street railways owned and operated by it in the city of Detroit, but aver the fact to be that all of the rights, powers, privileges, and franchises owned or possessed by said complainant pertaining to the street railways in the city of Detroit are derived from the provisions of chapter 94 of Howell's Annotated Statutes of Michigan and the several ordinances made and passed by the common council of the city of Detroit in pursuance thereof and hereinafter specifically referred to and made a part hereof.

2. These defendants admit that shortly after the date of its incorporation, and in the month of September, 1891, the said complainant acquired, by purchase from certain street railway companies then owning the same, certain lines of street railway constructed and in operation in the city of Detroit, being lines of street railway theretofore constructed, owned, and operated by the Detroit City railway, and certain other lines of street railway owned and operated theretofore by the Grand River Street Railway Company, and that since the date of its purchase aforesaid it has continued to maintain and operate the said lines of street railway up to the time of the filing of the bill of complaint herein.

3. These defendants admit that on the twenty-fourth day of November, A. D. 1862, the City of Detroit, then being a municipal corporation organized under a special charter granted by the
194 legislature of the State of Michigan, residing in the eastern district thereof, by and through its common council, adopted a certain ordinance, and therein granting to Eben N. Wilcox, his associates, successors, and assigns, certain rights, franchises, and privileges therein contained, a copy of which said ordinance for greater certainty is hereto annexed, marked Exhibit "A," and made a part hereof; that after the passage of said ordinance said Wilcox, his associates and assigns, were duly organized into a corporation under the train or tram railway law, being chapter 94 of Howell's Annotated Statutes, by the name of the Detroit City railway, and that said corporation duly accepted said ordinance and undertook to and did carry out and perform all the terms and conditions thereof; that from time to time thereafter certain amendatory and supplementary ordinances were made and adopted by the common

council of the city of Detroit in relation to said Detroit City railway, copies of which said several amendatory and supplementary ordinances are hereto attached, marked Exhibit "B," and made a part hereof. These defendants, further answering, say that by act of the legislature of the State of Michigan approved February 2, 1861, sections 33 and 34 of said chapter 94 of Howell's Annotated Statutes were enacted, a portion of said sections reading as follows:

SECTION 33. "It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State."

SECTION 34. "All companies organized for such purposes shall have the exclusive right to use the same, provided however that no such company shall be authorized to construct a railway under this act, through the streets of any town or city, without the con-
195 sent of the municipal authorities of said town or city, and under such regulations and upon such terms and conditions as the said authorities may from time to time prescribe."

And these defendants aver that at the time of the adoption of said ordinance of November 24, 1862, and of the incorporation of said Detroit City Railway Company there was no other provision or law in force in the State of Michigan relative to the organization and operation of street railway companies within the State, and that the common council of the city of Detroit possessed no power or authority to grant to street railway companies or persons any rights, powers, privileges, or franchises except such as is contained in the aforesaid sections so added to chapter 95. By act No. 257 of the Laws of the State of Michigan of 1867 said section 34 was amended by adding thereto the following: "Provided further that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights of franchise so granted shall be destroyed or unreasonably impaired; or said company or corporation be deprived of the right of constructing, maintaining an operating such railroad in the street, in such consent or grant named, pursuant to the terms thereof."

Said last-named act was approved March 27, 1867, has remained unchanged, and is still in force. By section 42 of said chapter 95, added thereto by said act of March 27, 1867, it is provided: "All the provisions of this act, as amended, shall be applicable to all corporations now organized under this act, as though specifically named."

4. These defendants, referring to the fourth paragraph of said complainant's bill of complaint and for answer thereto, spe-
196 cifically refer to said ordinance of November 24, 1862, and the several ordinances amendatory thereof and supplemental thereto, hereto attached, and referred to as Exhibit "A" in the last previous paragraph hereto.

5. These defendants, referring to the fifth paragraph of said complainant's bill of complaint and for answer thereto, respectfully refer to the ordinance therein referred to, which is likewise annexed to this answer and made a part hereof.

6. These defendants admit that an ordinance was adopted by the common council on the first day of May, 1868, granting to Matthew Prouty, Moses F. Dickinson, Wm. B. Wesson, Harvey King, and Jas. B. Mansfield, their associates, successors, and assigns, organized into a corporation under the laws of the State of Michigan, the right to construct, maintain, and operate a single or double track railway along and through Woodward avenue from Jefferson avenue to Grand River avenue, and thence along Grand River avenue to where it crosses the tracks of the Michigan Southern and Detroit and Monroe railroad-, a copy of which said ordinance and ordinances amendatory thereof and supplementary thereto, for greater certainty, is hereto attached, marked Exhibit "C," and made a part hereof; that the said grantees herein named were organized into a corporation known as the Grand River Street Railway Company in and by virtue of the provisions of chapter 94 of Howell's Annotated Statutes, and duly accepted said grant and under the terms thereof constructed and put into operation, and the said company, its successors and assigns, has ever since maintained in operation, a line of
197 street railway upon the streets therein named. These defendants aver that said railway company acquired no other or further rights, franchises, or privileges than such as is derived under the provisions of said chapter 94 of Howell's Annotated Statutes aforesaid and said ordinances, and that said railroad company, its successors and assigns, were and are at all times subject to such regulations as the common council of the city of Detroit may from time to time prescribe.

7. These defendants admit that on the sixteenth day of August, 1899, the common council of the city of Detroit passed and adopted an ordinance referred to in the seventh paragraph of said complainant's bill of complaint, being Exhibit "C" annexed to said bill of complaint.

8. These defendants admit that on the seventeenth day of April, 1886, the common council of the city of Detroit, with the approval of the mayor of said city, passed and adopted certain other ordinance-, specifically referred to in the eighth paragraph of said complainant's bill of complaint, a copy of which said ordinance, together with the ordinances amendatory thereto and supplementary thereof, is hereto annexed, marked Exhibit "D," and made a part hereof; and these defendants admit that on the sixteenth day of August, 1899, the common council of the city of Detroit adopted an ordinance amendatory thereof, a copy of which said ordinance is attached to the bill of complaint herein, marked Exhibit "D."

9. These defendants admit that on the thirteenth day of July, 1886, the common council of the city of Detroit, with the ap-
198 proval of the then mayor, passed and adopted a certain other ordinance, granting to the Highland Park Railway Company, its successors and assigns, certain rights and privileges, a copy of which said ordinance and ordinances amendatory thereof and supplementary thereto is hereto annexed, marked Exhibit "E," and made a part hereof. They admit that the complainant is now in possession and engaged in the operation of running a railway

constructed under said ordinance, but deny that it is entitled to the rates of fare fixed therein, but that the rates of fare on said line is subject to a reasonable regulation and adjustment from time to time as the interests of the public may demand. These defendants admit that on the sixteenth day of August, 1899, the common council of the city of Detroit, with the approval of the mayor, adopted an ordinance amendatory thereof, a copy of which said last-named ordinance is attached to the bill of complaint, marked Exhibit "E."

10. These defendants admit that by mesne conveyances, transfers, and leases the complainant has become the owner or lessee of all rights, franchises, and ordinance grants recited and set forth in the said bill of complaint, and of the lines of street railway constructed, maintained, and operated thereunder, and at the time of the filing of the bill of complaint herein said complainant, as owner or lessee, was maintaining and operating said lines of street railway, claiming to so operate under the provisions of said several ordinances aforesaid, but disregarding said several ordinances adopted by the common council on the sixteenth of August, 1899, copies of which are annexed to the said bill of complaint.

199 11. These defendants deny that under the terms of said original ordinance that complainant is entitled to receive and exact for the carriage of passengers over the lines of street railway owned, leased, and operated by it the full rate of five cents for a single ride for a continuous trip, in any one direction, over any one of the roads laid out and described in said ordinance; but these defendants admit that the said complainant company is at all times subject to such reasonable regulation in relation to the rates of fare and the conduct and operation of said railroad as the common council of the said city may from time to time prescribe, and that said several ordinances so made and adopted by the common council on the sixteenth of August, A. D. 1899, are reasonable regulations, made and adopted by the common council for the purpose of protecting the public against ex*h*orbitant and unreasonable rates of fare exacted by said complainant company from the public riding upon its said railway.

12. These defendants admit that the City of Detroit is a municipal corporation, organized under a special charter granted by the legislature of this State, and that whatever governmental powers it possesses it has received the same by virtue of direct and express grant from the State of Michigan, and it has possessed no governmental or legislative capacity except such as is granted by the terms of its charter and such authority as has been granted to it by statute to enter into agreements for the construction, maintenance, and operation of street railways in its streets by corporations or companies organized under chapter 94 and 95 of Howell's Annotated

200 Statutes, hereinbefore referred to; that by the grants heretofore made to the said complainant and its predecessors *and* the rights thereby created and conferred were created and conferred by the said City of Detroit in and by virtue of the authority conferred upon it by the legislature of the State of Michigan by the provisions of said chapter 94 of Howell's Annotated Statutes, and in

the making of said original ordinances grants and the fixing of the terms and conditions thereof and in fixing of the rates of fare which grantees were entitled to have and receive for the carriage of passengers the said City of Detroit exercised the power delegated to it by the legislature and as representative and agent of said State; and these defendants aver that said common council had no power or authority in the premises except such as is found in the provisions of chapter 94 of Howell's Annotated Statutes of Michigan aforesaid.

13. These defendants have no knowledge as to whether said grantors or lessors of said complainant believed it had, by virtue of the said several ordinances, full power, right, and authority to maintain and receive the rates of fare set forth therein without reduction or impairment, and that the provisions of said several ordinances with reference to said rates of fare were valid and binding, and could not be altered, amended, or repealed, and submit the same is entirely immaterial. These defendants admit that said grantors and lessors and said complainants had no right to rely upon any matters or things not contained in said chapter 94 aforesaid and in the ordinance aforesaid adopted by the common council of the city of Detroit in pursuance thereof, and that neither said chapter nor said
201 ordinance contain any provisions from which said grantors or lessors of said complainant had a right to believe that said ordinance could or would remain without alteration, amendment, or repeal.

14. These defendants admit that on the sixteenth day of August, 1899, the City of Detroit adopted in form and manner, as provided by the charter of said city, an ordinance entitled "An ordinance to amend an ordinance of the city of Detroit approved November 14, 1879," a copy of which said ordinance is attached to the said bill of complaint, marked Exhibit "A." These defendants also admit that on the said sixteenth day of August, 1899, the common council of the city of Detroit adopted a further and other ordinance, which is likewise referred to in the said fourteenth paragraph of the complainant's bill of complaint, a copy of which is annexed to said bill of complaint, marked Exhibit "B." These defendants admit that the complainant is now operating the lines of street railway constructed and owned by the Detroit, Fort Wayne and Belle Isle railway, which said lines were constructed by said company under the original ordinance of January 31, 1865, a copy of which, together with the ordinances amendatory thereof and supplemental thereto, are hereto annexed, marked Exhibit "F," and that said complainant has no other or further rights or privileges therein than as granted or conveyed in said ordinance of January 31, 1865. These defendants admit that said line is subject to the same reasonable regulation and control as the other lines hereinbefore referred to, and that said ordinance of August sixteenth, 1899, is valid and ought to be sustained as a reasonable regulation thereof.

202 15. These defendants admit that neither the complainant nor any of the grantors, predecessors, or lessees have agreed to consent to any change or modification in the terms of said various

ordinances fixing the rates of fare, nor have they or either of them consented to accept said ordinances, Exhibits "A," "B," "C," "D," and "E," and "B 2" annexed to said bill of complaint. These defendants admit that the same were passed without the solicitation, approval, or consent of said complainant or its grantors, and submit that said approval or consent was unnecessary.

16. These defendants deny that the privileges and grants mentioned and referred to in the said complainant's bill of complaint have been validly extended for periods of which considerable portions have yet to run, and submit that there has been no attempt for an extension of any franchises, rights, or privileges, except such as is contained in the said several ordinances, copies of which are annexed hereto and made a part hereof.

17. These defendants admit that the City of Detroit, in the enactment of the said several ordinances, Exhibits A, B, B 2, C, D, and E, attached — and made a part of the bill of complaint herein, assumed to enact the same in the exercise of legislative power claimed to have been conferred upon it by the State of Michigan by the terms and provisions of chapter 94 of Howell's An-otated Statutes, and they deny that chapter 95 of said Howell's Annotated Statutes has any application hereto.

18. These defendants deny that said complainant is entitled, under and by virtue of the terms of the various ordinances set out
203 in said bill of complaint, to charge the rates of fare therein named without reduction or impairment, but aver that said ordinances, Exhibits A, B, B 2, C, D, and E, annexed to said bill of complaint, are valid and binding regulations, which the defendant The City of Detroit has a right to enact and enforce.

19. These defendants admit that the said complainant, as owner or lessee, is now engaged in the operation of upwards of one hundred and thirty-four miles of street railway in the streets of the city of Detroit; that in such operation it has in use upwards of four hundred street cars charged and propelled by electricity, and has in its employ, engaged in such operation, upwards of one thousand men as motormen and conductors; that it carries thousands of passengers per day over the lines owned and operated by it, and these defendants admit that the said City of Detroit seeks and intends to compel the complainant to comply with the provisions of said ordinances, Exhibits A, B, B 2, C, D, and E.

20. These defendants have no knowledge of any of the matters or things stated and set forth in the twentieth paragraph of said complainant's bill of complaint, but submit that the same, if true, is entirely immaterial. These defendants admit *the* the City of Detroit is a citizen of the State of Michigan, a resident of the eastern district, southern division thereof; that the defendant William C. Maybury is mayor of said city; that Charles Flowers is corporation counsel of said city, both of whom are citizens of the State of Michi-
gan, residents of the eastern district, southern division, and
204 they admit that the matters in dispute in and between the parties in this suit exceed the sum of ten thousand dollars, exclusive of interest and costs, and these defendants submit that the

said complainant has not made or stated such case in its bill of complaint as entitled it to the relief therein sought or to any relief.

These defendants therefore pray that the said bill of complaint be dismissed, with reasonable costs and charges to these defendants.

CITY OF DETROIT.
F. A. BLADES, *City Controller.*
THE CITY OF DETROIT,
By WILLIAM C. MAYBURY, *Mayor.*
CHARLES FLOWERS,
Corporation Counsel.

CHAS. FLOWERS,
Solicitor for Def'ts
T. E. TARSNEY,
JASPER C. GATES, *Of Counsel.*

UNITED STATES OF AMERICA, } ss:
State of Michigan, County of Wayne, }

William C. Maybury, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause and subscribed the foregoing answer; that he has heard the same read and knows the contents thereof, and that the same is true in substance and in fact. This deponent further says that he verifies the above answer in behalf of all the said defendants.

WILLIAM C. MAYBURY.

Subscribed and sworn to before me this 19th day of April, A. D. 1900.

WILLIAM T. FITZPATRICK,
Notary Public, Wayne County, Mich.

205 EXHIBIT "A."

"An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit, approved November 24th, 1862, and the amendments thereto."

Whereas, Cornelius S. Bushnell, Nehemiah D. Sperry, Eben N. Wilcox, their associates, successors and assigns, propose to organize as a body politic and corporate under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 13, 1855 (Laws of 1885, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the city of Detroit, city or street railways; therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in Eben N. Wilcox and his associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double

track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and described, and in the manner and upon the condition set forth in this ordinance. (As amended December 27, 1862.)

206 SECTION 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River, and Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street, to the western limits of the city; and through such other streets and avenues in said city, as may, from time to time, be fixed and determined by the vote of the common council of the said city of Detroit, and assented to, in writing by said corporation, organized as provided in section first of this ordinance: And provided, the corporation does not assent in writing, within thirty days after the passage of said resolution of the council, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense: Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue, shall each run into and connect with the Woodward Avenue railways, in such direction that said railways shall be continued down to, and form each of them, one continuous route to Jefferson avenue: Provided, always, that said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863.)

SECTION 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a
207 double track the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and so as to accommodate the most common width of carriage wheels: Provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid on either side of the first: And provided further, that in all streets which are not paved or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of said railway, and place cars thereon for public use, they may, at any time thereafter, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, the

consent of the common council is first obtained. (As amended January 11, 1875.)

SECTION 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets or parts of streets, which are not paved, the rails shall be laid in such manner as shall least
208 interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, and their assigns, shall be required to keep the surface of the streets, inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt, filth, cleared and removed from the same at the expense of the grantees: Provided, however, that upon the paved portions of said streets the materials for repaving shall be supplied at the expense of the city. (As amended January 12, 1863.)

SECTION 5. The routes of all said railways shall commence in the Woodward Avenue road, at Campus Martius; from thence running on their several courses to the outer limits of the city: Provided, that in collecting fare, those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being travelled continuously by any one passenger at the same time, shall pay only one fare. (As amended January 12, 1863.)

SECTION 6. Said railways on Woodward avenue, or Witherell street, to Park lot sixty-two, through Jefferson avenue to the eastern limits, and through Jefferson avenue to Woodbridge, through Woodbridge to Third, and up Third to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapoton farm, shall be completed
209 within three years from and after the thirty-first day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm; through Michigan avenue to *the* Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require: Provided, that no such railway shall be required to be laid through any part of such routes, which shall not be worked up to the established grades thereof, until the city shall have completed such work.

SECTION 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe: Provided, always, that said council shall not require them to run regular cars oftener

than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railways shall be run for no other purpose than to transport passengers and their baggage, ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

SECTION 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this
210 ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

SECTION 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 10. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SECTION 11. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 12. The grantees, or their assigns, shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers, to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

SECTION 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

211 SECTION 14. Conductors shall announce to the passengers the name of the principal squares and streets, as the cars reach them.

SECTION 15. The cars shall, at all times, be entitled to the track, and any vehicle upon the track of said railways shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of said city of Detroit; and costs of prosecution shall not be at the expense of the city.

SECTION 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front, and a green light in the rear.

SECTION 17. Wherever gas or water pipes or sewers are now laid in the streets herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the gas company and the board of

public works, to take up or remove said pipes or sewers, in such manner as not unnecessarily to damage or injure said railways or their use, without claim against the city, gas company, or board of public works; and the common council expressly reserves to itself the right hereafter to lay down, or permit to be laid down, and repaired in said streets, gas or water pipes, and sewers, wherever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

212 SECTION 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted, shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the council does not extend the time: Provided, that if said grantees are delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance or by the contrivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance. (As amended December 27, 1862.)

SECTION 19. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public in relation to said railways.

SECTION 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

SECTION 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes, bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct

213 and complete, on or before the first day of October, A. D. 1863; and if said railways shall not then be completed, the sum so deposited shall be forfeited to the city: Provided, however, that if said grantees or their assigns, cannot procure the requisite amount of rail of the Philadelphia, or other suitable pattern, to build said railways, within the time specified with a suitable and competent force, then the time shall be extended until such rail shall be obtained, and laid with a suitable and competent force: And provided further, that the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rail cannot be procured. (As amended January 12, 1863.)

SECTION 22. The said grantees, and their assigns, shall pay to the treasurer of the city of Detroit, annually fifteen dollars on each and

every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license for the use of the city, after the term of five years from and after this date.

SECTION 23. Wherever the said grantees, their successors or assigns, shall have organized themselves in a body politic and corporate, under the said act of the legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and conferred to and upon them, by this ordinance, shall be given, granted and duly vested in said corporation, without any further action, consent, permission or authority of the common council whatever.

SECTION 24. All ordinances, or parts of ordinances heretofore made, ordained and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

214 SECTION 25. Any wilful violation of, or failure to comply with the provisions of this ordinance, by said railway company, or by any agent, conductor, driver, or any person in the employ of said company, shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs, the court may make a further sentence that the offender be committed to the county jail or to the Detroit house of correction, until the payment thereof, for any period of time not exceeding six months. (As amended March 29, 1864.)

EXHIBIT "B."

The following amendments and additional sections to the above ordinance were approved August 19, 1863:

SECTION 26. Permission is hereby given the Detroit railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section twenty-one of said ordinance).

SECTION 27. As a condition of the acceptance of this permission, the said Detroit City railway may, and shall complete its road and track on Fort street, Michigan avenue, and Gratiot street, as provided by the aforesaid ordinances, by the first day of October 1864; and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

215 SECTION 28. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said track and said plank road; and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the

"T" rail, which is used for street railways, and weighs not less than thirty-three pounds to the yard.

SECTION 29. The said railway is hereby authorized to extend its track, and run its cars, through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railway Company.

SECTION 30. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue and Gratiot street, shall each be considered and run as one route, and subject its passengers to a payment of a single fare each: Provided, however, that all cars running north from Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue, shall be considered as making a portion of each of said routes respectively.

SECTION 31. The Detroit City railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real-estate owners as are affected thereby, may, and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood cemetery, and run its cars thereon at such times as will accom-
216 modate the public: Provided, however, no person shall be charged more than one cent either way upon this track; and said railway are also authorized to run a track and their cars to Mount Elliott cemetery, along Mount Elliott avenue, and charge the same rate of fare as to Elmwood cemetery.

SECTION 32. The Detroit City railway is hereby authorized to build its tracks and run its cars from its track on Jefferson avenue, upon and along Randolph street, southerly to Atwater street, and thence along Atwater street easterly to Brush street, and, as said track approaches the Detroit and Milwaukee depot, the said railway may turn the same on to the southerly side of said Atwater street, so as to run the said cars up to the sidewalk in front of the buildings of the Detroit and Milwaukee Railway Company. (Approved October 7, 1863.)

The following amendments and additional sections to the foregoing ordinance were approved January 4, 1864:

SECTION 33. Permission is hereby given to the Detroit City railway to build its road and track on and through Fort street from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the tracks of said railway, in which case said railway will be relieved of its obligation to build through Third street as aforesaid.

SECTION 34. Permission is also hereby given to said railway to build its track and road along and through Stanton street, from Fort street to the River road, and thence on and through River
217 road to the westerly limits of the city; and such building shall relieve said railway of its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street, from the railroad crossing, through Stanton

street and River road, to the city limits, with "T" rail, similar and of equal weight to that used on Michigan avenue.

SECTION 35. The road and track of said railway, from said western limits, through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

SECTION 36. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track, by constructing a branch track from their main track to said car-house, either through Second street or from Third street, through the alley between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St. Antoine street with their tracks on Jefferson avenue, by constructing a branch track from St. Antoine street to said car depot and stables; such branch track to be a single track only, and to intersect said Jefferson Avenue track at right angles, and by means of turn-tables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenues. (As amended December 15, 1874.)

218 SECTION 37. The time for completing the road of said company on Gratiot street, is hereby extended to November 1, 1865; provided, however, that said company shall extend their track as far as Chene street, on or before the 20th day of November next. (Approved October 8, 1864.)

SECTION 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the plank road company, in such position as shall be agreed upon between the railway and plank road companies: Provided, however, that unless the line agreed on shall be along the center of said street, such agreement shall be first reported to and approved by the council. (Approved October 8, 1864.)

SECTION 39. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue, in accordance with the provisions of the ordinance above referred to, being section 3 of this chapter. (Approved January 11, 1875.)

SECTION 40. Permission, consent, and authority are hereby granted to the Detroit City Railway Company to construct a second, and maintain a double track in, on and throughout Jefferson avenue, in the city of Detroit: Provided, expressly, that if hereafter the pavement on said avenue shall be extended, or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track, and between the tracks and shall also keep their portion of the said tracks, and two feet nine inches

219 outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of

the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth, and all other necessary work, and the whole shall be done in a manner satisfactory to the common council. (Approved July 8, 1873.)

The following amendments and additional sections to the foregoing ordinances were approved August 20, 1877:

SECTION 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second, and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the city of Detroit. It is, however expressly understood and provided: That, as said avenue has already been ordered paved or repaved, the said grantee or company shall, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave, or repave all the portions of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of said tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair; and the two inner rails of its said tracks shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall
220 be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

SECTION 42. Any provision or condition in the ordinance creating said company, or of any ordinance amendatory thereof, contravening the provisions of the foregoing section, are hereby repealed.

Additional Right of Way.

The following amendatory ordinance was approved November 14, 1879:

"An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate certain railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes."

SECTION 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street, within sixty days from this date; and from Chene street to the city limits within such period as the common council shall by resolution hereafter declare to be necessary.

SECTION 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue, from its present terminus on Jefferson avenue, to At-

water street; thence through Atwater street to the Detroit,
221 Grand Haven & Milwaukee depot. And the line on Congress street heretofore operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus, through Randolph street to Atwater street, which extensions are hereby declared to be additional routes, for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the City Railway Company, consent and authority is hereby given.

SECTION 3. The ordinance- of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit and Grand Trunk Junction Street Railway Company, and to the Central Market, Cass Avenue and Third Street Railway Company, authority to construct and operate street railways through certain streets of the city of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting the Detroit City Railway Company certain rights therein set forth.

SECTION 4. On the 1st day of July and January in each half year, from the 1st of January, 1880, the Detroit City Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts. On and after the 1st day of January, 1880, whenever any of the streets through which
222 the line of any of the railways operated by said company shall run, shall hereafter be ordered to be paved, repaved or repaired, said company shall furnish all materials, and bear the entire expenses of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their railway or track, and the spaces between the lines of double tracks and all switches, said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobblestone or some similar durable and proper material to be approved by the common council.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order.

SECTION 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company, by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily, on such occasions as the common council may, by resolution, from time to time

designate, to accommodate public processions or any other like convenience.

SECTION 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the city clerk of Detroit by the Detroit City Railway Company, the
223 Detroit and Grand Trunk Junction Street Railway Company, and the Central Market, Cass Avenue and the Third Street Railway Company, or their successors, and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

SECTION 7. The right to amend or repeal this ordinance, in case of its violation by said company or companies, is expressly reserved.

Right of Way in Farrar Street.

The following additional ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council December 11, 1880:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable half-switch, on Farrar street, in the city of Detroit, from a point ten feet north of the north line of Bates street, extended to Monroe avenue, and so as to connect with the track of said company on said avenue.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms thereof.

224 *Double Track on Griswold Street.*

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council July 8, 1882:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Griswold street, from State street to Larned street, and so as to connect at said streets with the present main track on said Griswold street: Provided, that the inside rails shall be laid not more than four feet apart.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Double Track to Michigan Central Depot.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council March 29, 1884:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is
225 hereby authorized and permitted to lay, construct, use and operate a double track on Woodbridge street from the present terminus of its double-track line near Second street westward to the east line on Third street, and so as to connect with the main track of said street in the form of a Y, and to remove the present track across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street, thirty feet west of the west line of Third street.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Additional Tracks on Campus Martius.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council July 21, 1894:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate an additional track through the Campus Martius of said city, extending from the present termination of the double track of said company, near the northerly line of said Campus Martius, southerly to the north line of Fort street, extended so as to form one continuous track for said company across the Campus Martius: Provided, that the inside rails shall be laid not more than four feet apart.

226 SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Brush Street Line.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council January 5, 1885:

SECTION 1. Subject to all the provisions and the requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate certain street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use, and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to maintain, keep and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinance, viz: Commencing at a point on Ferry street, adjacent to the Detroit & Milwaukee junction, running thence along Ferry street to Russell street, thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue, and thence over the present track of the Detroit City Railway Company on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

227 SECTION 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in section 1 of this ordinance on or before the first day of December, A. D. 1885, and said grantees shall, on or before the first day of February, deposit with the controller of said city the sum of five thousand dollars in money, or United States stocks, or in Treasury notes, which said deposit shall be forfeited to the City of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance. Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the controller shall refund to said grantees the amount so deposited as forfeit with him: Provided, that should said grantees be prevented from completing said railway by said December 1st, 1885, not due to any fault or action of said grantees, then the said grantees may be granted an extension of time within which to so complete said railway.

SECTION 3. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed by the common

council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the city clerk a written acceptance of the same, and shall execute a good and
228 sufficient bond to the City of Detroit in the sum of $50,000, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

Extension on Russell Street.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council October 9, 1885:

SECTION 1. Subject to all the provisions and requirements of said chapter 98 of the Revised Ordinances of 1884, of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862," and of supplements and amendments thereto, the Detroit City railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Russell street to Ferry street connecting the present track of said railway northerly through Russell street to the south line of the Lake Shore and Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

The following additional ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council November 19, 1889:

SECTION 1. Subject to the provisions and requirements of chapter 98 of the Revised Ordinances of 1884, and of all ordinances supplementary and amendatory thereof, and of the ordinances approved January —, 1885, authorizing the Detroit City Railway Company to construct and operate a street railway on Brush, Russell and other designated streets in said city, permission and authority are
229 hereby given to said Detroit City Railway Company, to extend its single track with suitable switches, on Russell street from Ferry avenue to the city limits, and to operate and use the same as a part of the Brush and Russell Street Railway line.

SECTION 2. The laying of said track shall be completed within thirty days from the passage of this ordinance.

Trumbull Avenue Line.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council July 31, 1885:

SECTION 1. Subject to all the provisions and requirements of chapter 50, of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary

to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879.

The Detroit City railway is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use, and to operate thereon railway cars in the manner and subject to the conditions herein contained, and to all requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue, thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the
230 Congress and Baker Street railway on Seventh street southerly to Congress street, easterly along Congress street to Randolph street and southerly through Randolph street to the terminus of said road to Atwater street.

SECTION 2. The said Detroit City railway shall complete that portion of said route from the intersection of Howard and Seventh streets to Warren avenue and have the same in full operation within one year from the date of the passage of this ordinance.

SECTION 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary by the common council to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SECTION 4. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the City of Detroit in the sum of fifty thousand dollars ($50,000), to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Extension of Double Track on Michigan Avenue to Twenty-fifth Street.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council September 1, 1886:

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City railway to construct a second and main-
231 tain a double track in, on and through Michigan avenue, from Thirteenth-and-a-half street to Twenty-fifth street in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

SECTION 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written

acceptance of the terms hereof, and a written agreement to pave said street in accordance with the terms of its proposition as reported upon to the board of aldermen, by a special committee, August 10, 1886.

Relative to Taxation and to Adjust Past Taxes.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved and passed over the mayor's veto by the common council January 1, 1887:

SECTION 1. From the first day of July, 1882, to the thirty-*first day of December, 1896, said railway shall* pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expiration of each half year during the entire period above mentioned the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to the said city treasurer the percentage so found to be due.

SECTION 2. From the 1st day of July, 1882, to the end of its franchise under the ordinance approved November 14, 1879, said railway shall also pay the City of Detroit such taxes as have been up to this date and shall be thereafter levied and assessed upon the
232 lots and parcels of land and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner, and shall be payable at the same time as other city taxes on lands.

SECTION 3. In adjusting the amount due under the foregoing sections from the first day of July, 1882, to the thirty-first day of December, 1886, the railway company shall be credited with all sums heretofore paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such balance as may be found due, forthwith upon its ascertainment. Thereupon all suits and proceedings between the city and railway company shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SECTION 4. The above-mentioned percentage payments and the tax on lands provided for to accrue from January 1st, 1887, to the end of the franchise of said railway, are to be paid by said railway company and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been made or may be levied, assessed or imposed under any present or future law or authority. If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway, upon the payment of the percentage payments to become due under the ordinance; and
233 the obligation made to such percentage payments shall be satisfied and discharged to that extent; and, in no event shall said

railway be liable to pay under any form of tax, license or charge, any sums in excess of said percentage, and the tax on the lands of said railway as above provided. Provided, however, that nothing herein contained shall be construed as a consent on the part of the Detroit City railway to the levying or collecting of any further tax, license or charge than the tax on the gross receipts, hereinbefore provided for, and the tax on its lands hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of the said Detroit City railway.

SECTION 5. Subject to the provisions of this ordinance, which are only intended to change the provisions of the ordinance of November 14, 1879, as to the percentage on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

SECTION 6. This ordinance shall take effect when the Detroit City railway has filed its written acceptance of the same with the city clerk.

Extension of Third Street Line to Holden Road.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council July 26, 1887:

SECTION 1. Subject to all the requirements and provisions of chapter 50 of the Revised Ordinances of 1878 and of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons
234 to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, and ordinances supplementary thereto, the Detroit City Railway Company is hereby authorized, permitted and required to lay, construct, use and operate a single street railway track with suitable switches, turnouts and turntables, in and through the following streets and avenues in the said city of Detroit, and the same keep, maintain, and use, and to operate thereon street railway cars, to wit: From the present terminus of the line of track of said Detroit City railway on Third street or avenue in said city along said Third street or avenue to the Holden road; thence in a westerly direction along the center of said Holden road to the point where the track of the Detroit and Bay City Railroad Company crosses said Holden road.

SECTION 2. That portion of said route from the present terminus of the track on Third street or avenue to the Holden road is to be constructed and laid contemporaneously with the paving of said Third street or avenue to the Holden road; and that portion of said route on the Holden road to be constructed and laid before the first day of January, A. D. 1888, and the whole of said extension to be in operation by January first, 1888, in connection with and as a part of the line of said Detroit City railway, now in operation on said Third street or avenue.

SECTION 3. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written

acceptance of the same, and shall execute a good and sufficient
235 bond to the City of Detroit in the sum of twenty-five thousand dollars ($25,000), to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days after the approval of this ordinance.

Extension of Trumbull Avenue Line.

The following ordinance, applying to and governing the Detroit City Railway Company, was approved by the common council October 27, 1888:

SECTION 1. Subject to all the provisions and requirements of chapter 98 (of the Revised Ordinances of 1884, of the amendments thereof), and of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and of supplements and amendments thereto," the Detroit City railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway, northerly through Trumbull avenue to the southerly line of the Lake Shore and Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SECTION 2. The said Detroit City railway shall have said track completed and the same in full operation within sixty days from the date of the passage of this ordinance.

SECTION 3. It is hereby reserved to the common council of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

236 SECTION 4. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the City of Detroit in the sum of ten thousand dollars ($10,000), to be approved by the common council, and conditioned for the faithful performance of this ordinance, provided that such acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

East Fort Street Line—Chene Street Line—Cass Avenue Extension—Double Tracks in Jefferson Avenue and Gratiot Avenue—Mack Street Line.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council January 3, 1889:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the Year 1884, and amendments thereof and supplements thereto, and of an ordinance entitled, "An ordinance supplementary to an ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 14, 1879," and all amend-

ments and supplements thereto, the Detroit City railway is hereby authorized and permitted to lay, construct, use and operate a street railway with convenient tracks for turnouts, side tracks, curves and switches in and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884, and in said ordinance and amendments and supplements thereto, viz:

237 Commencing at a point — Congress street east where its present track on said Congress street turns on to Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly on Brush street to its intersection with Fort street east; thence easterly along said Fort street easterly to Mt. Elliott avenue, thence along said Mt. Elliott avenue to the Jefferson Avenue double track, thence along said Jefferson Avenue double track to the easterly limits of the city.

Also, to extend its tracks on Cass avenue from where it now turns on to Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the city of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street railway track in, along and through Mack street, from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

238 Also, to lay, construct use and operate a single street railway track in, along and through the following streets and avenues viz: Commencing at a point on Joseph Campau avenue, near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the Detroit City railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge, and approaches thereto, to Belle Isle

park, to said park, with all the privileges and rights which may be granted to any other street railway.

SECTION 2. The track hereby authorized on Congress Brush and Fort street shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits, contemporaneously with the pavement
239 of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by its common council.

SECTION 3. Permission and authority is hereby given to the said Detroit City railway to run its cars at a rate of speed not exceeding ten miles an hour, and is hereby required to run thereon at an average — of not less than six miles per hour, and whenever it shall be deemed advisable to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said city of Detroit upon all or any of said lines now in use and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the board of public works.

SECTION 4. The above-mentioned additional lines shall be operated in connection with and as a part of the present system of the Detroit City railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit City railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to wit:

(*a.*) It shall carry passengers from its Cass Avenue and Third
240 Street, Trumbull Avenue, Michigan Avenue, and Congress and Baker Street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau Atwater and Chene streets, shall be entitled to be transferred at Fort street to and con-

veyed by cars running on the proposed line on Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue, to be carried to any point on said Gratiot Avenue and Michigan Avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip.

(*b.*) A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride on said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction, over the Fort Street east, Chene Street and Gratiot Avenue lines for a single fare of five cents.

(*c.*) It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer
241 of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

(*d.*) Such arrangements shall be made by this company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriages provided for in paragraphs "A," "B," and "C" of this section.

(*e.*) It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines, and shall run the cars on the said Woodward Avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on Woodward avenue.

SECTION 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period by the ordinance approved November 14, 1879, that is to say, until November 14, 1909.

SECTION 6. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary by the common council to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

242 SECTION 7. This ordinance shall take immediate effect when said Detroit City railway shall have filed with the city clerk a written acceptance of the same, and shall execute a bond to the City of Detroit, in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordi-

nance, provided such written acceptance and bonds shall be filed within thirty days of the approval of this ordinance by the mayor.

Extension of Line on Michigan Avenue to Westerly City Limits.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council April 5, 1899:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit, the year 1884, and of an ordinance supplementary to an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereof, approved November 14, 1879, and all ordinances supplementary thereof and in amendment thereto, the Detroit City railway is hereby authorized and permitted to lay, construct, use and operate a double track on and through Michigan avenue in said city of Detroit, from the present terminus of its double track on Michigan avenue, westerly to the city limits.

SECTION 2. Said track shall be laid contemporaneous with the pavement of said Michigan avenue, and only so far as said street is or may hereafter be paved, and the expense of paving the portions of said street between the outer rails of said track shall be paid by said company.

243 *Providing for the Sale of Certain Tickets on Cars.*

The following amendment, applying to and governing the Detroit City railway, was approved by the common council February 4, 1893:

Whereas, section 6 of an ordinance approved January 3, 1889, being part of chapter 109 of the Revised Ordinances of the City of Detroit for the Year 1890, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interests, welfare and accommodation of the public in relation to the Detroit City railway, its successors and assigns, is reserved to the common council of the city of Detroit; and

Whereas, paragraph D of section IV of said ordinance approved January 3, 1889, with reference to said railway, being part of chapter 109 of the Revised Ordinances of the City of Detroit for the Year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight (8) tickets for twenty-five cents, to be good for transportation between certain hours of each day.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns, to furnish and provide the conductor of each and every car operated by the said company within the limits of the city of Detroit with tickets to be good for transportation between the hours of 5.30 and 7 a. m. and 5.15 and 6.16 p. m., each ticket to be good for transportation as provided for in said ordinance. (As amended February 26, 1895.)

244 SECTION 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductors or other duly authorized agents, to any person or persons applying therefor upon each and every car operated by said company within the limits of the city of Detroit, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5.30 and 7 a. m. and 5.15 and 6.15 p. m., at the rate of eight (8) tickets for twenty-five cents, each ticket to be good for one fare. (As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Detroit City railway, its successors and assigns, shall neglect to provide tickets and refuse to sell to persons applying therefor as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 4. Any violation — or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine when so imposed may be recovered from the person or corporation so convicted in an action at law in the proper court.

Additional Tracks on Griswold, Woodward, and Atwater.

The following amendment, applying to and governing the Detroit Citizens' Street Railway Company, was approved October 14, 1892, by the common council of Detroit:

SECTION 1. It is hereby ordained by the people of the city of Detroit: Consent, permission and authority is hereby granted to the Detroit Citizens' Street Railway Company to construct,
245 maintain and operate street railways with the necessary tracks, cross-over tracks and turnouts, in and through the following streets and avenues in the city of Detroit:

1. To construct, maintain and operate a single track from the existing tracks operated by said company at the intersection of Griswold street and Grand River avenue, southerly along Griswold street and connecting with the existing track operated by said company on Griswold street, near the corner of State street.

2. A single track from the existing track operated by said company at the intersection of Griswold street and Larned street west, thence southerly along Griswold street to Atwater street, and thence through Atwater street, connecting with the tracks on Woodward avenue.

3. A single track from the north line of Jefferson avenue on Woodward avenue and thence through Woodward avenue to Atwater street.

SECTION 2. The said railways hereby authorized shall be operated as part of the system of railways authorized by the ordinance approved May 1st, 1898, granting certain privileges to Nathaniel Prouty and others for a street railway along Grand River avenue, and the ordinance amendatory thereof and supplementary thereto, and shall be subject to the terms and conditions thereof. The same may be operated through Griswold street over the line of railway

now existing thereon, subject to all the rights, whatever they may be, which were granted under an ordinance granting authority to the Central Market, Cass Avenue, and Third Street Railway Company and its assigns, to construct and operate a street railway on
246 Griswold. But this ordinance shall not be held or treated as extending the time when the rights and privileges of maintaining and operating street railways under said ordinance approved May 1. 1868, or said supplemental ordinances expire; nor shall the same prejudice or waive any claim which the City of Detroit may have as to the legal enactment of said ordinances, or as to any of the terms or conditions thereof. Nor shall the same prejudice or waive any claim of said city in the suit now pending between the said city and the Detroit Citizens' Street Railway Company and others. No additional fare shall be required for carriage over any tracks hereby authorized. Switches on the tracks hereby authorized shall not be permitted.

SECTION 3. It is further ordained that only two railroad tracks shall be maintained and operated by the said Detroit Citizens' Street Railway Company on Woodward avenue between Grand River avenue and Michigan avenue, and the westerly track heretofore operated by the Detroit City railway shall be removed, and upon the following terms, agreements and conditions:

1. The track heretofore operated by the Grand River Street Railway Company, the extension of which from *which* its present terminus at Jefferson avenue to Atwater street is hereby permitted, shall be part of the system of railways authorized under the ordinance approved May 1st, 1868, and may be connected with the other lines or tracks of the Detroit Citizens' Street Railway Company at any points where said company may desire to make convenient connections with that track, so that cars from other lines may be operated thereon and cars on said track may be likewise operated on other lines and tracks.

247 2. The right of maintaining and operating a street railway between Grand River avenue and Jefferson avenue by said Detroit Citizens' Street Railway Company shall be exclusive, and the common council of the city of Detroit shall not give its consent to the construction or operation of any railroad track by any street railway company on Woodward avenue between Grand River and Jefferson avenue- before the expiration of the time when the right to maintain a railway on Woodward avenue heretofore granted to the Detroit City railway shall expire. And said Detroit Citizens' Street Railway Company may reset its track for the removal of which this agreement is made, if said common council shall, within the time above limited, grant consent to any other street railway company to construct a track on Woodward avenue, between Grand River avenue and Jefferson avenue.

4. The said Citizens' Street Railway Company shall within thirty days from the date *of* when this ordinance shall take effect pay to the treasurer of the City of Detroit any costs heretofore paid of repaving the space to be occupied by the tracks that are hereby

authorized, on all streets or portions of streets upon which said tracks are laid.

5. Any street railway to whom the privelege may be granted to construct a line of street railway through any of the streets mentioned in this ordinance and in respect to which privilege is hereby granted, may use for operating its road all of the additions to the line of said Citizens' railway as are herein and hereby authorized, upon such terms as to compensation as shall be determined by arbitrators to be appointed as follows: One of the arbitrators to be appointed by the Detroit Citizens' Street Railway Company, and one to be appointed by the street railway company to whom such privilege may be
248 granted and if they are unable to agree upon the compensation to be paid to said Citizens' Street Railway Company for the use of such track, then a third arbitrator shall be appointed by the then presiding judge of the circuit court for this county, and any two of the persons so appointed may make such award.

SECTION 6. Said Citizens' Street Railway Company shall file its acceptance of the terms hereof with the city clerk within thirty days from the date when this ordinance shall take effect, otherwise the same shall be void.

SECTION 7. An ordinance authorizing the Detroit Citizens' Street Railway Company to construct, maintain and operate railway tracks on certain streets approved August 30th, 1892, be and the same is hereby repealed.

SECTION 8. This ordinance shall take immediate effect.

Double Track on Trumbull Avenue.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved and passed over the mayor's veto by the common council September 10, 1895:

SECTION 1. Subject to all the provisions and requirements of chapter 109, of the Revised Ordinances of the City of Detroit, for the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change its present single track on Trumbull avenue to a double track from Michigan avenue to the Lake Shore & Michigan Southern Railway crossing, and to maintain
249 and operate the same as a double-track line.

If the city should at any time authorize the widening of said street and paving, it shall be paid by the Citizens' Company its successors and assigns, and not the abutting property-holders.

SECTION 2. This ordinance shall take effect, if accepted in writing by said company within ten days after its final passage.

Double Track on Dix Avenue and Baker Street.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved by the common council September 17, 1895:

SECTION 1. Subject to all the provisions and requirements of chap-

ter 109 of the Revised Ordinances of the City of Detroit, for the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change the single track on Dix avenue to a double track from the westerly city limits along Dix avenue to Twenty-fourth street; and to construct a single track on Dix avenue from Twenty-fourth to Twenty-third street, and to construct a single track on Twenty-third street from Dix avenue to Baker street; and to change the single track to a double track on Baker street from Sixteenth street to Trumbull avenue.

250 SECTION 2. The Baker Street line of the Detroit Citizens' Street Railway Company, after the Porter and Abbott Street lines have been put in operation, shall run through Michigan avenue to Woodward avenue to Congress street, and east on Congress street over what is known as a loop line to Mt. Elliott avenue.

That in consideration of crossing Baker Street bridge over the M. C. R. R. the company shall share the present structure in such shape as to make it safe for motor cars to cross, and be responsible and hold the city harmless from any damage from accident or otherwise in consequence of the use of said bridge for street railway purposes; and provided further, that when the city reconstructs said Baker Street bridge the said Detroit Citizens' Street Railway Company, grantee herein, shall pay to the city 25 per cent. of the cost of said reconstruction — the time the contract for such reconstruction is made; and further provided that when a street is widened the cost of the widening and the additional pavement made necessary, the expense shall be born by the said Citizens' Street Railway Company, provided that whenever the Detroit railway shall relinquish its right to construct and operate a railway on Lafayette avenue, the Detroit Citizens' Street Railway Company will permit said Detroit railway to have the joint use of their tracks on Michigan avenue from Porter to Abbott street to the east line of Griswold street on the payment by said Detroit railway to said Detroit Citizens' Street Railway Company — the sum of ten thousand dollars, if said relinquishment of Lafayette avenue and the said payment by said Detroit railway be made before any track is laid on Lafayette avenue by said Detroit railway, its successors or assigns.

251 SECTION 3. This ordinance shall take effect, if accepted in writing by said company, within ten (10) days after its final passage.

Double Track on Mack Avenue.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, was approved by the common council October 26, 1895:

SECTION 1. Subject to all the provisions of chapter 109, of the Revised Ordinances of the City of Detroit, of the Year 1890, and of all amendments and supplements thereto, consent, permission and authority is hereby given to the Detroit Citizens' Street Railway Company to change its present single track on Mack avenue

to a double track, and to operate and maintain same as a double-track street railway.

SECTION 2. Transfers without additional charge shall be given, good for one continuous ride, from the Gratiot Avenue line to the Mack Avenue line, said transfers to be good at the junction of the two avenues.

SECTION 3. This ordinance shall take immediate effect if accepted in writing by the grantee within ten (10) days after its final passage.

EXHIBIT "C."

Grand River Street Railway.

The following original ordinances, applying to and governing the Grand River Street Railway Company, was approved by the common council of Detroit on May 1, 1868:

Whereas, Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King and James P. Mansfield, their associates, successors and assigns, propose to organize as a body politic and corporate,
252 under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 15, 1855, (Laws of 1855, p. 338), for the purpose of constructing and operating in and through the streets of the city of Detroit: therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in the said Nathaniel Prouty, Moses F. Dickinson, William B. Wesson, Harvey King, James P. Mansfield, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway with all the necessary and convenient tracks for turnouts, side tracks and switches in and along the course of the streets and bridges in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use and to operate thereon railway cars and carriages during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance: Provided, that nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running in the city of Detroit.

SECTION 2. That said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, through said first-named avenue to its intersection with Grand River avenue, and from thence on through said Grand River avenue, to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe and Toledo Railway tracks, and
253 also on or through any other street or streets running between the western terminus above specified, and Woodward avenue to the Detroit river as the common council shall by resolution designate; provided, that the track from Fort street to Jefferson avenue

shall be laid under the direction of the committee on streets and the city engineer. (As amended June 26, 1871.)

SECTION 3. All railways built, constructed or maintained under the provisions of this ordinance, shall be laid in the center of any and each street wherein the same are built, constructed or maintained (save upon Woodward avenue), if on a single track; and if on a double track, the inside rail of each track shall be laid within four feet and two inches of the center of the street; the said rails shall be laid four feet eight inches apart, so as to accommodate the most common width of carriage wheels; provided, nevertheless, that in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may at any time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, that the consent of the common council is first obtained.

254 SECTION 4. The track of said railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same, and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof as now established, or as they shall, from time to time, be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, with necessary ties and stringers, the same shall be done at the expense of the grantees; and in all streets, and parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, or their assigns, shall be required to keep the surface of the streets inside of the rails in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portions of the streets at the expense of the grantees, and in such manner as not to obstruct travel in any part of the street.

SECTION 5. Consent, permission and authority is hereby given, granted and vested to the Grand River Street Railway Company to lay and construct an additional track along Woodward avenue, from Grand River avenue to the north line of Fort street, so as to form a complete and double track between said two points. Such additional track to be laid under the supervision and direction of the board of public works, and subject to all the conditions and provisions of the ordinance governing and controlling said railway; provided, however, that such authority and permission and all rights therein, may be revoked and withdrawn by the common

255 council of said city should any transfer, assignment or consolidation of said railway company be made or effected with any other railway company or corporation. The cars to be used on said railway shall be drawn by animals only, at a speed not exceeding six miles per hour, and shall be run at intervals not exceeding one reg-

ular car every five minutes during twelve hours each day, from Lincoln avenue to Jefferson avenue, and up to eleven o'clock at night. The cars and carriages used by said grantees shall be of the best style used on street railways in said city, and shall be used for no other purpose than to transport passengers and their ordinary baggage: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstructions by snow and otherwise. (As amended March 3, 1883.)

SECTION 6. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars within the meaning of the preceeding section.

SECTION 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet except in cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 8. The said grantees shall complete their railway from Woodward avenue through Grand River street, to the easterly line in Woodbridge farm, contemporaneously with the paving of said street to said easterly line of the Woodbridge farm; said road
256 thence from the easterly line of the Woodbridge farm to be completed to the westerly limits of the city as soon as the public necessity requires it, and the common council shall be the judge of such necessity, and shall also complete their road on any street designated by the common council, from Grand River street to the Detroit river, or to Jefferson avenue, within three months after such designation shall be made by said council.

SECTION 9. No car shall be allowed to stop at a cross-walk, or in front of any intersecting street, except to avoid collision or to prevent danger to persons or property in the street.

SECTION 10. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 11. The grantees or their assigns, shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track, or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

SECTION 12. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

257 SECTION 13. Conductors shall announce to passengers the names of the principal squares and streets as the cars reach them.

SECTION 14. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when

any car moves up, so as to leave the track unobstructed, and the drivers of any vehicles refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of said city of Detroit, and costs of prosecution shall not be at the expense of the city.

SECTION 15. The cars, after sunset, shall be provided with signal lights—blue in front, and green in rear of the cars.

SECTION 16. Wherever gas or water pipes and sewers are *not* laid in the streets herein specified, and through which railways are to pass, the said railway must be laid down and maintained subject to the rights now in the city and the gas company, and board of public works to take up and remove said pipes or sewers in such a manner as not unnecessarily to damage or injure said railways, or their use, without claim against said city, gas company, or the board of public works; and the common council expressly reserves to itself the right hereafter to lay down, or to permit to be laid down and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall
258 take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the street to its former condition.

SECTION 17. If said grantees or other assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, or by resolutions of the common council, then the rights and privileges granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof: Provided, that if said grantees shall be delayed by the order or injunction of any court: Provided, said injunction is not obtained by connivance of said grantees: And, further, provided, that if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SECTION 18. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

SECTION 19. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

259 SECTION 20. This ordinance shall be void and of no effect unless the grantees shall, within one month of the date of the passage thereof, notify the common council in writing of their acceptance of and agreement to the provisions of this ordinance, and shall, within six months after said last-named date, commence*d* the work of building and constructing said railway from Woodward avenue to the east line of the Woodbridge farm.

SECTION 21. It is distinctly provided, understood and agreed, that the rights, franchises or privileges, hereby conferred upon the

grantees, are subject to the rights now vested in the Detroit City railway.

SECTION 22. On and after the date upon which this ordinance shall take effect, whenever any of the streets or avenues through which the line of said railway is, or may be laid, shall be ordered to be paved, repaved or repaired, said company shall furnish all the material and bear the entire expense of excavating, grading and paving and repairing that portion of the streets and avenues which lies between the outer rails of their track, including the space between all double tracks and switches; and said company shall at all times keep the same clean, and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said spaces to use either cedar blocks or cobble stone, or some similar durable or proper material, to be approved by the common council. (As amended June 12, 1882.)

SECTION 23. The said grantees and their assigns shall pay
260 to the city treasurer of Detroit, annually, after five years from the passage of this ordinance, fifteen dollars on each and every passenger car, to be collected as a license for the use of the city, after the term of five years from and after this date.

SECTION 24. Whenever the said grantees, their successors or assigns shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted, and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

Myrtle Street Railway.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council June 27, 1885:

SECTION 1. Subject to all and every of the provisions, regulations and requirements of chapter fifty-two (52) of the Revised Ordinances of the City of Detroit for 1878, and of the amendments thereof, consent, authority and permission are hereby given to the Grand River Street Railway Company to lay, construct, use and operate a single street railway track, with suitable switches, turnouts, and turn-tables, on and through Myrtle street, in the city of Detroit, and the same to keep, maintain and operate thereon street railway cars, in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance and the amendments thereto, to wit: Commencing and join-
261 ing the Grand River Street Railway track at the intersection of Myrtle street and Grand River avenue, and running thence westerly on and through Myrtle street to Mt. Hope avenue.

SECTION 2. The said company shall run through cars on the route described, from the westerly terminus on Myrtle street to the intersection of Woodward and Jefferson avenues, and the rate of fare over such route shall be five cents.

SECTION 3. The said grantee shall complete said railway in and through said Myrtle street as aforesaid, and have the same in complete operation in connection with the track of said Grand River Street railway within one year from the approval of this ordinance, or within one year from the establishing the grade of said Myrtle street in accordance therewith.

SECTION 4. It is hereby reserved to the common council of the city of Detroit to make such further rules and regulations as may from time to time be deemed by the said common council necessary to protect the interest, safety and accommodation of the public in relation to said route.

SECTION 5. This ordinance shall take immediate effect if the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance, file with the city clerk its acceptance thereof, and a good and sufficient bond to the City of Detroit in the penal sum of five thousand dollars, to be approved by the common council, for the faithful performance of the terms of this ordinance by said company.

262 *Extension of Charter.*

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council December 3, 1885:

SECTION 1. On the first day of January in each year, from the first day of January, 1886, the Grand River Street Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent., during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company, on or before the beginning of each year, as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts; and said special tax shall be in lieu of license, and other taxes and charges, under existing ordinances: Provided, that this shall not in any manner affect the obligation of said company in the matter of paving or repairing pavements, as required by existing ordinances.

SECTION 2. The powers and privileges conferred and obligations imposed on the Grand River Street Railway Company by the ordinance passed May 1, 1868, and the amendments thereto, are hereby extended and limited to thirty years from and after the first day of January, A. D. 1886. And it is further agreed and stipulated that the running of cars, on any street, or any portion thereof, will be discontinued, temporarily, on such occasions as the board of aldermen may, by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

263 SECTION 3. This ordinance shall take immediate effect when written acceptance of the terms thereof *are* filed in the office of the city clerk of the city of Detroit by the said Grand River Street Railway Company, and from that date, all ordinances, or parts of ordinances, in conflict with the provisions hereof shall stand repealed,

and all ordinances or parts of ordinances, not in conflict, are hereby affirmed and continued in force.

SECTION 4. The right to amend or repeal this ordinance, in case of its violation by said company, is expressly reserved.

Extension of Grand River Avenue Line to Westerly City Limits.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council August 3, 1888:

SECTION 1. Subject to all and every of the provisions, regulations and requirements of chapter fifty-two (52) of the Revised Ordinances of the City of Detroit for 1878, and of the amendment thereof, consent, permission and authority are hereby given to the Grand River Street Railway Company to lay, construct, use and operate with animal power, a single street railway track, with suitable switches, turnouts and turn-tables on and through the center of Grand River avenue, from the present terminus of its track on said avenue to the westerly limits under the supervision of the board of public works, and the same to keep, maintain and operate thereon street
264 railway cars, in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance and amendments thereto.

SECTION 2. The said grantee shall complete said extension of railway as soon as practicable after the approval of this ordinance, and before the said street shall be paved under the proceedings now before the common council to pave the same, and in advance of such pavement, and a failure to comply with the provisions shall operate as a forfeiture of all rights under this ordinance.

SECTION 3. It is hereby reserved to the common council of the city of Detroit to make such further rules and regulations as may from time to time be deemed by the said common council necessary to protect the interests, safety and accommodation of the public in relation to said route.

SECTION 4. This ordinance shall take effect when the Grand River Street Railway Company shall, within thirty days after the approval of this ordinance, file with the city clerk its acceptance thereof, and a good and sufficient bond to the City of Detroit in the penal sum of five thousand dollars ($5,000), to be approved by the common council, for the faithful performance of the terms of this ordinance by said company.

265 *Crawford Street and East Congress Street Lines—Double Track on Grand River Avenue.*

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council January 3, 1889:

SECTION 1. Subject to all the provisions, regulations and requirements of chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Street

Railway Company to construct, operate and maintain a double-track street railway in, along and through Grand River avenue so called, in the city of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turn-tables and cross-overs; also to construct, operate and maintain a single street railway track in, along and through Crawford street in the said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence northerly along the center of said Crawford street to the Detroit and Bay City Railroad crossing, together with all suitable and necessary turnouts, turn-tables, curves and switches; also to construct, operate and maintain a single-track railway in, along, through Congress street east in said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company, and running thence easterly along said Congress street east to the easterly limits of the city of Detroit, or so far as said Congress street may be opened, and until said Congress street shall be opened to the city limits, or one year thereafter as hereinafter provided, the said Grand River Street Railway Company, the per-
266 mission of the Detroit City railway having been first obtained for such action—shall connect its track at the corner of Mt. Elliott and Congress streets east with that of the Detroit City railway and run its cars over said tracks of said Detroit City railway along Mt. Elliott and Jefferson avenues east of Mt. Elliott to the Boulevard, thence to a point at a convenient distance from the Belle Isle Park bridge to be fixed by the board of public works.

SECTION 2. Said double track on said Grand River avenue shall be laid so that the outer rails of said track shall be equidistant from a line drawn along the center of said street and in addition to the paving required to be done by the said Grand River Street Railway Company, under its present ordinance it shall lay and maintain the pavement between the double tracks hereby authorized.

SECTION 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration for the permission hereby granted, the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly terminal of its line on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east
267 in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets; also for a continuous trip from any point on the line of said railway, for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets *tickets* for twenty-five cents, said tickets to be good for transportation over the entire route of said company, or any

portion thereof traveled continuously, either way, when offered for fare by persons taking passage on the cars between the hours of 5.30 and 7 o'clock in the morning, and between the hours of 5.15 and 6.15 o'clock in the afternoon.

SECTION 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance: Provided, however, that the railway track along and upon Congress street east, between Mt. Elliott avenue and the city limits, shall be laid, constructed and in use within one year after that portion of Congress street east shall be opened for public use: Provided also, that the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance by the mayor, file its acceptance thereof in writing, and shall give within the same period of time a bond in the penal sum of $20,000 for the faithful performance by it of the terms and conditions of this ordinance.

SECTION 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

268 SECTION 6. That said company is hereby authorized to run its cars at a rate of speed not exceeding ten miles per hour, and is hereby required to run them at an average rate of speed of not less than six miles per hour, and is also permitted to use, in operating its cars, electricity, or any other proper or suitable motive power used by any other street railway company, now or hereafter organized and operated in the city of Detroit.

Third Street Line.

The following ordinance, applying to and governing the Grand River Street Railway Company, was approved by the common council April 23, 1889:

SECTION 1. Subject to all the provisions of chapter 100 of the Revised Ordinances of 1884, and of all amendments and supplements thereto, and subject to the provisions of an ordinance entitled, "An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884 of the City of Detroit, and all amendments and supplements thereto," approved January 3, 1889, consent, permission and authority is hereby given to the Grand River Street Railway Company to lay a single-track street railway, with all necessary and convenient turnouts, side tracks, and switches, in, along and through Third street, in the city of Detroit, from its intersection with Grand River street southerly along said Third street in the center thereof to a point on said Third street south of Woodbridge street and between said Woodbridge street and the bank of the Detroit river, and the same to keep, maintain and use, and to operate thereon street railway cars, subject and according to the provisions of the above-mentioned ordinances.

269 SECTION 2. Said track shall join with the tracks of the Grand River Street Railway Company on Grand River street, and shall be operated as a part of and in connection with the present

street railway lines of said company. Said line shall be constructed and in operation within one year from the date of the approval of this ordinance.

All Grand River Cars to Run to City Limits.

The following ordinance, applying to and governing the Detroit Citizens' Street Railway Company, as assignee of the Grand River Street Railway Company, was approved by the common council January 3, 1893:

SECTION 1. It is hereby ordained by the people of the city of Detroit: That the Detroit Citizens' Street Railway Company, as the assignee of the Grand River Street Railway Company, be and is hereby required to run all of its cars on Grand River avenue to the westerly boundary of the city.

SECTION 2. Each and every violation of, or failure to comply with the requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs. (As amended March 21, 1893.)

SECTION 3. This ordinance shall take effect at the expiration of five days from the date of the approval of this ordinance.

Curve at Grand River and Cass Avenues.

The following ordinance, applying to and governing the Cass Avenue and Grand River Avenue street car lines, was approved by the common council September 29, 1893:

270 SECTION 1. Consent, permission and authority *is* hereby granted to the owners of the Cass Avenue and Grand River Avenue street car lines to construct and operate a single-track curve connection from the Cass Avenue line with the northerly track of the Grand River Avenue street car tracks, extending through the northeasterly intersection of said streets.

SECTION 2. This ordinance shall not be held or treated as extending the rights or privileges of either of said street railway lines, and is granted subject to all of the provisions of the ordinances existing with reference to the construction and regulation of street railways in the city of Detroit, and shall not be held to prejudice the city of Detroit in any of its rights now being contested in the courts with reference to the life of the street railway franchise.

SECTION 3. The owners of said railway lines shall file an acceptance of the terms hereof with the city clerk within ten days from the date when this ordinance shall take effect. Otherwise, the same shall be void.

SECTION 4. This ordinance shall take immediate effect.

EXHIBIT "D."

Dix Avenue Railway.

The following ordinance, applying to and governing the Dix Avenue railway, was approved by the common council April 17, 1886:

271 SECTION 1. That consent, permission and authority *is* hereby given, granted and duly vested in George Dorr, Samuel A. Plumer, Calvin K. Brandon, Bethune Duffield, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan, to lay a single track for a railway, with all the necessary tracks for turnouts, side tracks and switches, in and along the course of the streets in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the time hereafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SECTION 2. The said grantees are by the provisions of this ordinance authorized to construct and operate a railway on and through the following streets, namely: Commencing at the intersection of Baker and Twenty-fourth streets, thence on and through Twenty-fourth street to the Dix road, and thence, with the exclusive right, on and through the Dix road to the city limits.

SECTION 3. Said railway through the said streets shall be constructed under the supervision of the board of public works, and the tracks shall be laid in the center of and conform to the grade of said streets. The *guage* of said track shall be four feet eight and one-half inches, and the rails shall be a flat rail, and shall be so laid as least to interfere with public travel. (As amended June 25, 1889.)

272 SECTION 4. The cars to be used on said railway shall be drawn by animals, and shall run at a rate of speed not to exceed ten miles an hour, and shall run as often as public convenience shall require and the common council shall prescribe: Provided, that the said company shall run regular cars at least once in thirty minutes during the sixteen hours of every day; and the cars in use upon the said railway shall be run for no other purpose than to transport passengers and their ordinary baggage: Provided, that other cars and carriages may be used for constructing and repairing said railway tracks and for clearing the same from snow and other obstructions. (As amended June 25, 1889.)

SECTION 6. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. The payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Congress & Baker Street railway, to any point upon the line of said last-named railway, and payment of fare by a passenger riding west upon said Congress & Baker Street railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city

limits: Provided, in case the Congress & Baker Street railway shall be extended easterly, the said fare above mentioned shall entitle the passengers traveling in either direction to a ride over the line of such extension.

SECTION 7. No car shall be allowed to stop upon a cross-walk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street. When the con-
273 ductor of any car is required to stop at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 8. The grantees or their assigns shall employ careful, sober and prudent persons to operate said railway and it shall be the duty of such persons to be vigilant and watchful to protect the public from danger.

SECTION 9. Conductors shall not allow ladies or children to enter or leave the car while in motion.

SECTION 10. Conductors shall announce to passengers the names of the crosss-treets as the cars reach them.

SECTION 11. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out, when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so, shall be liable to a fine not exceeding fifty dollars on conviction before the recorder's court of the city of Detroit.

SECTION 12. Said grantees shall provide and keep in repair such substantial and permanent approaches to its tracks at all points on the line of its road so that teams, vehicles and persons shall be enabled to cross the track conveniently at all times.

SECTION 13. The cars, after sunset, shall be provided with proper signal lights.

274 SECTION 14. The said railway shall be laid down subject to the right of the city or any municipal board, to lay down, take up, change or remove any work of any kind on or beneath the surface of the streets, without any claim for damages on the part of said railway.

SECTION 15. The power and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after its passage.

SECTION 16. Whenever the grantees, their successors and assigns, shall have organized themselves into a body politic and corporate under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council.

SECTION 17. Cars going in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SECTION 18. On the first day of July and January in each year after the completion of said railway, said railway company shall pay

to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railways within the city limits, and the treasurer of said company on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 19. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies between the outer rail of their tracks, and said company shall at all times keep the same clean and in good condition; but said company shall have the right for the purposes of paving, repaving or repairing said space to use either cedar blocks or cobblestones or some other similar durable and proper material, such material to be subject to the approval of the board of public works.

The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligations of said company to pay general taxes on all its property.

SECTION 20. This ordinance shall be void and of no effect unless the grantees, their associates, successors and assigns, shall, within one month from the date of the approval thereof, notify the common council, in writing, of its acceptance and shall file a good and sufficient bond in the sum of five thousand dollars to be approved by the city controller, conditioned that the said railway shall be completed in the time specified herein and for the faithful performance of the terms of this ordinance; and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

SECTION 21. The right is hereby reserved to the common council of the city of Detroit to make such further rules, orders or regulations as from time to time — be deemed necessary by the common council to protect the interest, safety, welfare or accommodation of the public in relation to said railway.

SECTION 22. Any wilful violation of or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed one hundred dollars and costs; and — the imposition of such fine and costs the court may make a further sentence, that the offender be imprisoned in the Detroit house of correction or the county jail until such fine and costs are paid: Provided, however, that the term of imprisonment shall not exceed the period of six months.

SECTION 23. The right to amend or repeal this ordinance, in case of its violation by said company, is expressly reserved.

Service of Twenty-fourth Street and Dix Avenue.

The following ordinance, applying to and governing the Detroit City railway, was approved by the common council November 27, 1894:

Whereas, the Revised Ordinance- of the City of Detroit provide that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the inter-
277 est, welfare and accommodation of the public in relation to the Detroit City railway, its successors and assigns is reserved to the common council of the city of Detroit; and

Whereas, the interest, welfare and accommodation of the public in the opinion of the common council of the city of Detroit requires that better street railway facilities shall be furnished residents of the western portion of the city, along and adjacent to Dix avenue by the more frequent operation of street cars on the street railway on said avenue and Twenty-fourth street:

It is hereby ordained by the people of the city of Detroit—

SECTION 1. That from and after November 25th, A. D. 1893, it shall be the duty of the Detroit City railway, its successors and assigns, to run and operate street cars in each direction upon the street railway on Twenty-fourth street and upon Dix avenue from Twenty-fourth street to the westerly city limits in such a manner that the intervals between cars going in the same direction shall not exceed eight minutes between the hours of 6 o'clock a. m. and 10.30 p. m. each day.

SECTION 2. For each and every day in which the said Detroit City railway, its successors and assigns, shall neglect to run and operate cars as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SECTION 3. Any violation and failure to comply with the provisions or requirements of this ordinance shall be punished by
278 a fine not to exceed two hundred dollars and costs, and such fine, when so imposed, may be recovered from the person or corporation so convicted in an action at law in the proper court.

SECTION 4. This ordinance shall take immediate effect.

Highland Park Railway.

EXHIBIT "E."

The following ordinance, applying to and governing the Highland Park Railway Company, was approved by the common council July 13, 1886:

SECTION 1. That consent, permission and authority are hereby given, granted and duly vested in the Highland Park Railway Company, its successors and assigns, a corporation organized under the laws of the State of Michigan, to construct, maintain and operate a single or double track street railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and

along Woodward avenue, commencing at the northerly side of the railroad crossing and running thence northerly to the city limits, and to keep, maintain, use and operate thereon street railway cars and carriages during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance: Provided that until the double track is laid the switches shall be laid on such side as will be occupied by said double track when the same shall be constructed.

SECTION 2. The track of said railway shall be constructed
279 under the supervision of the board of public works; and of rails similar to the rails now used by the City Railway Company on Woodward avenue, and such as shall the least obstruct the free passage of vehicles or carriages over, across or along the same, and the upper surface of the rails shall be laid flush with the surface of the street, and shall conform to the grade thereof as now established, or as it shall from time to time be re-established or altered by the city authorities.

SECTION 3. The railway through said street shall be laid so that the center of the track shall be the center of the street if on a single track, and if on a double track the inside rail of each track shall be laid within two feet and four inches of the center of the street, so as to enable two cars to pass on opposite tracks, and leave a space between said cars of at least eighteen inches, and the gauge of said tracks, shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels; provided, that where a single track is laid in the first instance, it may be laid so as to form one of a double track authorized under this section.

SECTION 4. The cars to be used on said railway shall be drawn by animals, or operated by electric motors, and shall run at a rate of speed not to exceed ten miles per hour, and shall run as often as public convenience shall require and the common council shall prescribe: Provided, that said company shall run regular cars at least once in thirty minutes during sixteen hours in every day;
280 and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage: Provided, that if the operation of said railway by electricity shall be or become impracticable or dangerous to human life, the common council may revoke the privileges of thus operating said railway, and compel said railway to use animal power instead.

SECTION 5. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. The payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Woodward Avenue street railway, to any point upon the line of said last-named railway; and payment of fare by a passenger riding north upon said Woodward Avenue street railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city limits.

SECTION 6. No car shall be allowed to stop upon a cross-walk or in

front of any intersecting streets, except to avoid collision or prevent danger to persons or property in the street. When the conductor of any car is required to stop, at the intersection of streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 7. The grantees or their assigns, shall employ careful, sober and prudent persons to operate said railway, and it shall be the duty of such employees to be vigilant and watchful to protect the public from danger.

281 SECTION 8. Conductors shall not allow ladies or children to enter or leave the car while in motion.

SECTION 9. Conductors shall announce to the passengers the names of cross-streets as the cars reach them.

SECTION 10. The cars shall at all times be entitled to the track, and any vehicle upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding fifty dollars, on conviction before the recorder's court of the city of Detroit.

SECTION 11. Said grantees shall provide and keep in repair such substantial and permanent approaches to its tracks at all points on the line of its road, so that teams, vehicles and persons shall be enabled to cross the track conveniently at all times.

SECTION 12. The cars, after sunset, shall be provided with signal lights.

SECTION 13. The said railway shall be laid down subject to the right of the city, or any municipal board, to lay down, take up, change or remove any kind of work on or beneath the surface of the streets, without any claim for damages on the part of said railway.

SECTION 14. The powers and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after the date of its passage.

282 SECTION 15. Cars going in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

SECTION 16. On the first of July and January in each year, after the completion of said railway, said railway company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 17. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies

between the outer rails of their tracks, and said company shall at all times keep the same clear and in good order and condition, but said company shall have the right for the purpose of paving, repaving or repairing said space, to use either cedar blocks or cobblestones, or some other similar, durable and proper material to be subject to the approval of the board of public works. The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligations of said company
283 to pay general taxes on all its property.

SECTION 18. This ordinance shall be void and of no effect unless the grantees, their successors and assigns, shall, within one month from the date of the approval thereof, notify the common council of its acceptance, in writing, and shall file a good and sufficient bond in the sum of five thousand dollars, to be approved by the city controller, conditioned that the said railway shall be completed within the time specified herein, and for the faithful performance of the terms of this ordinance; and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

SECTION 19. The right is hereby reserved to the common council of the city of Detroit to make such further rules, orders or regulations as from time to time may be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

SECTION 20. Any wilful violation — or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed five hundred dollars and costs; and in the imposition of such fine and costs the court may make a further sentence, that the offender be imprisoned in the Detroit house of correction or county jail until such fine and costs are paid: Provided, however, that the term of imprisonment shall not exceed the period of six months.

SECTION 21. The right to amend or repeal this ordinance, in case of its violation by said company, is expressly reserved.

284 *Railroad Crossing.*

The following ordinance, applying to and governing the Highland Park Railway Company, was approved by the common council September 12, 1893:

SECTION 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance to authorize the Highland Park Railway Company, its successors and assigns, a body corporate, organized under the laws of the State of Michigan, to construct, maintain and operate a railway on Woodward avenue, between the railroad crossing and the northern city limits," approved July 13, 1886, being chapter 132 of the Revised Ordinances of the City of Detroit for the Year 1890, and subject to all the provisions and requirements of all ordinances of said city of Detroit with reference to street railways, the Highland Park Railway Company is hereby granted permission and authority to construct, maintain and operate its single-track or double-track railway in and along Woodward

avenue, from the present southerly terminus of said railway at the northerly side of the railroad crossing, southerly over and across the right of way of the Michigan Central Railroad Company, the Grand Trunk railway, the Lake Shore & Michigan Southern railway, the Belt Line railroad, so as to connect with the railway tracks in said Woodward avenue on the southerly side of said railway premises.

SECTION 2. The said extension of railway tracks shall be constructed under the supervision of the board of public works and in such manner as shall be approved by them, and when so constructed, shall be and become a part of the railway of said Highland Park
285 Railway Company, and subject to all the terms and provisions of the ordinances relating thereto: Provided, that in case of the grade of the railway tracks and said Woodward avenue shall be separated, then the said Highland Park Railway Company shall immediately cause the tracks hereby authorized to conform to said newly established grade, and waives all damages caused by said change of grade.

SECTION 3. This ordinance shall be of no effect unless the said grantee shall, within ten days, file a written acceptance of its terms and conditions.

SECTION 4. This ordinance shall take immediate effect.

EXHIBIT F.

Fort Wayne and Elmwood Railway Company.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council January 31, 1865:

Whereas, Frederick Buhl, John P. Clark, Eber Ward, their associates, successors and assigns, propose to organize a body politic and corporate, under the "Act to provide for the construction of train railways," approved February 13, 1855 (Laws of 1855, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating through the streets of the city of Detroit a street railway, to be known as the "Fort Street & Elmwood Avenue railway;" therefore,

286 It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority *is* hereby given, granted and duly vested in Frederick Buhl and his associates, who may be approved by the common council, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay a single or a double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SECTION 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate a street railway, as herein provided, upon the following route: Commencing at the present westerly limits of the city of Detroit, where Fort street touches and intersects said westerly limits; thence easterly through Fort street to Woodward avenue; and along the southerly side of Michigan avenue to Randolph street; thence up Randolph street; and from said Randolph street to Elmwood avenue; through Croghan street the whole distance to said Elmwood avenue: Provided, said street can be opened without expense to the city; otherwise through Croghan street to St. Aubin street; and thence through St. Aubin street to Clinton avenue; and thence through Clinton avenue to Elm-
287 wood avenue; and thence through the said Elmwood avenue to the gate of Elmwood cemetery. If the city of Detroit pave Croghan street contemporaneously with the laying of tracks on said street, said railway company shall pave their track on said street, and two feet four inches on either side thereof, at their own expense. (As amended March 3, 1865.)

SECTION 3. The railway through said street shall be laid in the center thereof, if on a single track; and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space of at least eighteen inches, and the *guage* of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of *a* carriage wheels: Provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first; and, provided, further, that in all streets which are not paved, or where plank roads are laid, the track of said railway may be laid elsewhere that in the center thereof as may be most convenient under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any time thereafter, within five years, build a second track so that they do not interrupt the running of their own cars on the first complete track: Provided, the consent of the common council is first obtained.

288 SECTION 4. The track of said railway shall be laid of such rails as are now laid in Woodward avenue, and as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the street, and shall conform to the grade thereof as now established or as they shall from time to time, be established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets or parts of streets, which are not paved, the rails shall be laid in such a manner as shall least interfere with public travel thereon, and as shall be authorized and approved by the city engineer. The grantees and their assigns shall be required to keep the surface of the streets inside the rails, and for two feet four

inches outside thereof in good order and repair, and all snow, ice and dirt and filth cleaned and removed from the same, in such a manner as will not obstruct the passage of said streets, at the expense of the grantees: Provided, however, that upon the paved portion of said streets, the materials for repaving shall be supplied at the expense of the city.

SECTION 5. The route of said railway shall commence at that point on Fort street where said street intersects the westerly limits of the city of Detroit; from thence running to Elmwood avenue, on the course set forth in section two of this ordinance; and in collecting fare the whole of said distance shall be deemed but one route; and each passenger traveling the same continuously over the whole or any portion thereof, shall pay only one fare, the amount of which fare shall be five cents.

289 SECTION 6. Said railway shall be completed from the westerly limits of the city to Woodward avenue, on or before the first day of August, A. D. 1865, and the remainder thereof, from Woodward avenue to Elmwood avenue, on or before the twentieth day of August, A. D. 1866: Provided, however, that the said railway shall be completed from Woodward avenue to St. Aubin avenue, upon the route designated in said ordinance, on or before the first day of July, A. D. 1866. (As amended June 16, 1866, and August 13, 1866.)

SECTION 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe: Provided, always, that said common council shall not require them to run regular cars oftener than once in fifteen minutes during sixteen hours every day from the fifteenth day of April to the fifteenth day of October, and fourteen hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; and the cars and carriages for that purpose shall be of the best style in use on said railways: Provided, that other cars and carriages may be used for constructing and repairing said railway tracks, and for cleaning the same from obstructions by snow or otherwise.

SECTION 8. The rate of fare for any distance shall not exceed five cents in any car, on said route, except when cars or carriages shall be chartered for the specific purposes: Provided, cars so char-
290 tered shall be so designated by placards, and shall not be considered regular cars within the meaning of the preceding section.

SECTION 9. Cars drawn in the same direction shall not approach within a distance of one hundred feet, except in cases of accident, or at a station, or for the purposes of connecting two cars together.

SECTION 10. No cars shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SECTION 11. When the conductor of any car is required to stop at

the intersection of a street, to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

SECTION 12. The grantees or their assigns, shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road; and it shall be the duty of all such agents, conductors and drivers, to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it. At the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest space and time possible; and the driver shall be provided with a whistle for the purpose of sounding the alarm in cases of danger.

291 SECTION 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SECTION 14. Conductors shall announce to passengers the names of the principal squares and streets as the cars reach them.

SECTION 15. The cars shall at all times be entitled to the track, and any vehicles upon the track shall turn out when any car comes up, so as to leave the tracks unobstructed; and the driver of any vehicle refusing to do so shall be liable to fine not exceeding ten dollars, on conviction before the recorder's court of the city of Detroit; but costs and prosecution shall not be at the expense of the city: Provided, however, that the steam fire-engines shall always have the right of the track on unpaved streets, when going to a fire.

SECTION 16. The cars after sunset shall be provided with colored signal lights—a red light in front, and a green light in rear

SECTION 17. Wherever gas or water pipes or sewers are now laid in the streets herein specified, and through which said railway is to pass, the said railway must be laid down and maintained, subject to the right now in the city, and the gas company and the board of public works to take up and remove said pipes and sewers in such a manner as not unnecessarily to damage or injure said railway or its use, without claim against said city, gas company or board of public works; and the common council expressly reserves to itself the right hereinafter to lay down or permit

292 to be laid down, and repaired in said streets, whenever the common council shall so direct by resolution; the said gas or water companies, or private individuals, who shall take up pavement for the purpose aforesaid, being always required as by the present city ordinance, to restore the pavement in the streets to its former condition.

SECTION 18. If said grantees or their assigns, shall fail to complete said railway, or any part thereof, within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to the whole of said route herein established, and the city shall be entitled to take possession thereof, provided the council does not extend the time: Provided, that if said grantees shall be delayed by the order or injunction of any court, and said order and injunction shall not have been obtained at the instance or by the

connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SECTION 19. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways,.

SECTION 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

SECTION 21. Said grantees shall, on or before the first day
293 of March, A. D. 1865, deposit with the controller of said city the sum of five thousand dollars in money or in United States stocks, or in Treasury notes bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion by said grantees of said line of railway, which they are required to construct and complete on or before the time herein mentioned for the completion of the same, and if the said railway shall not then be completed the sum so deposited shall be forfeited to the city.

SECTION 22. The said grantees and their assigns shall pay to the treasurer of the city of Detroit, annually, twenty-five dollars on each and every passenger and other car, excepting only those cars used for constructing, repairing and cleaning the track of said road, to be collected as a license for the use of the city, after the term of five years from and after this date.

SECTION 23. Whenever said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, and the amendment or amendments thereto, all the powers and privileges granted and conferred to and upon them by this ordinance, shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

SECTION 24. No railway shall hereafter be built on and along the street occupied by the railway herein provided for, for a greater distance than three blocks, at any place, without the consent of the grantees and their successors.

294 SECTION 25. The rails of said street railway shall be laid on a foundation equal to that of Woodward avenue, or any other first-class railroad.

Supplementary Ordinance.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Street Railway Company, was approved by the common council on June 30, 1880:

SECTION 1. On the first day of July and January in each year from the first day of July, 1880, the Fort Wayne & Elmwood Street Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent., during the period of this ordinance, on the gross receipts collected for fares by said company, for riding on

said railway within the city limits, and the treasurer of said —, on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SECTION 2. On and after the date upon which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving or repairing that portion of the street which lies between the outer rails of their tracks, including the space between all double tracks and switches and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said space to use either cedar blocks or cobblestone or some other similar, durable and proper material, such latter material to be subject to the approval of the common council, and all cobblestones or other material now constituting the roadway between the said tracks of the company shall belong to said company, while used for the purposes of paving, repaving and repairing in the place or places where such cobblestones or other material are now or hereafter may be for the first time laid or placed.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges under existing ordinances.

SECTION 3. The powers and privileges conferred and obligations imposed on the Fort Wayne & Elmwood Railway Company by the ordinance passed January 31, 1865, and the amendments thereto, are hereby extended and limited to thirty years from this date. And it is further agreed and stipulated that the running of cars on any street, or any portion thereof will be discontinued temporarily on such occasions as the common council may by resolution, from time to time designate, to accommodate public processions or any other like public convenience.

SECTION 4. This ordinance shall take immediate effect, when written acceptance of the terms thereof *are* filed in the office of the city clerk of Detroit by the said Fort Wayne & Elmwood Company; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continue- in force.

SECTION 5. The right to amend or repeal this ordinance, in case of its violation by this company, is expressly reserved.

Extension of Double Track on Fort Street from Fifth Street to Griswold Street.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council June 27, 1885:

SECTION 1. Subject to all and every one of the existing provisions,

regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Company to lay, extend, construct, use and operate a second or double street railway track on and through Fort street in the city of Detroit from the present terminus of its double tracks near the intersection of Fort and Fifth streets to Griswold street, in the city of Detroit, and the same to keep, maintain and operate thereon street railway cars under, in the manner and subject to the provisions and requirements set forth in chapter ninety-nine (99) of the Revised Ordinance- of the City of Detroit for the Year 1884, and the supplementary ordinance therein contained and by this ordinance imposed.

297 SECTION 2. The second or double track by this ordinance authorized and permitted shall be so laid, constructed and extended on and through said Fort street between the present terminus of the double track of said Fort Wayne & Elmwood Railway Company, near the intersection of Fort and Fifth streets to the intersection of Fort and Griswold streets on each side of the center of said Fort street, that the inside rail of each of said tracks shall be at such a distance from the center of said Fort street as shall enable two cars to pass on the parallel tracks and leave a space of at least eighteen inches between such cars when passing.

SECTION 3. The said Fort Wayne & Elmwood Street Railway Company shall complete the work of laying, construction and extending the tracks authorized by this ordinance, and shall have said tracks and its railway between said Fifth and Griswold streets in full operation thereon, on or before the first day of January, 1886, or within six months from the date of the passage of this ordinance.

Extension to Westerly City Limits.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council on July 24, 1886:

SECTION 1. Subject to the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinances of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, save and except as the same are by this ordinance changed or modified expressly or by implication, consent, permission and authority is hereby given and

298 granted to the Fort Wayne & Elmwood Railway Company to lay, construct, extend, use and operate a street railway track with all necessary convenient switches, side tracks and turnouts in, on and along the center of Fort street, from the intersection of Fort street and Clark avenue, in the city of Detroit, to the intersection of Fort street and the westerly city limits of the city of Detroit, and the same to keep, maintain and operate thereon street railway cars for the term of twenty-four years from the date of the passage of this ordinance.

SECTION 2. The rate of fare for any distance on said Fort Wayne & Elmwood railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of section 7 of chapter 99 of the Revised Ordinance- of 1884 of the City of Detroit.

SECTION 3. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall run cars for the transportation of passengers and their ordinary baggage between said Clark avenue and the westerly limits of the city of Detroit every half hour for thirteen hours of each day from the first day of May to the first day of November, and every hour for thirteen hours each day from the first day of November to the first day of May of each and every year: Provided, that the said company may be required to run its cars over the extension hereby authorized as often as every fifteen minutes if required by public convenience and the ordinance of the common council.

299 SECTION 4. The said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall build, construct and complete the street railway track, and the switches, side tracks and turnouts hereby authorized, and shall have the same in readiness for operation ninety days after the acceptance of this ordinance by said Fort Wayne & Elmwood Railway Company has been filed in the office of the city clerk of the city of Detroit: Provided, that such additional switches and side tracks may be hereafter constructed along the extension of said railway hereby authorized as may be necessary or convenient.

SECTION 5. This ordinance shall take immediate effect when written acceptance of the terms hereof shall be filed in the office of the city clerk of the city of Detroit by said Fort Wayne & Elmwood Railway Company, and from that date all ordinances and parts of ordinances in conflict with the provisions hereof shall stand repealed, and all ordinances or parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Extension of Line and Single Track on Elmwood Avenue and East Lafayette Street to Boulevard.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council December 22, 1886:

SECTION 1. That subject to each and all of the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinance- of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, and of

300 an ordinance to authorize said company to construct, maintain and operate a double street railway track on certain portions of Fort street, approved June 27, 1885, and of this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct,

maintain and use — street railway track, and thereon to maintain and operate street railway cars upon and along the following avenue and street in the city of Detroit, namely: Commencing at and connecting with the present easterly terminus of the street railway track of said company at the junction of Croghan street and Elmwood avenue, running thence upon and along Elmwood avenue to the intersection of that avenue and Lafayette street, thence along Lafayette street to a point thereon not less than thirty feet nor more than one hundred feet west of the limits of the Boulevard on Frontenac avenue.

SECTION 2. That, in addition to the provisions, regulations and requirements mentioned in the preceding section, the consent, permission and authority hereby given and granted are so given and granted, subject to the following conditions and limitations, with which the said company must and shall comply, namely:

1. The street railway track hereby authorized to be laid, constructed and maintained shall be made a single track with suitable and convenient turnouts, side tracks and switches, and shall be laid and maintained in the center of the street.

301 2. The said company shall complete the work of laying and constructing the street railway tracks hereby authorized, and shall have the same in operation and use within one year after the passage of this ordinance.

3. The street railway track heretofore laid and constructed by said company, under the provisions of the several ordinances mentioned in section 1, and street railway tracks authorized to be laid and constructed by this ordinance when completed shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof at or within the city limits from thence running along the line of said railway, as heretofore, hereby or hereunder established, to the Boulevard on Frontenac avenue; and in collecting fares the whole of said distance shall be considered one route, and each passenger travelling the same continuously, either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents.

SECTION 3. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall execute and deliver to the controller of the city of Detroit a good and sufficient bond to said city in the penal sum of ten thousand dollars, to be approved by the common council, and conditioned for the faithful performance of the conditions and terms of this ordinance.

302 *Relative to Taxation and to Adjust Past Taxes.*

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council, over the veto of the mayor, January 4, 1887:

SECTION 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of

January, 1897, to the end of its franchise, under the ordinance approved June 30, 1880, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expiration of each half year during the entire period above mentioned, the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to the city treasurer the percentage so found to be due.

SECTION 2. From the first day of July, 1882, to the end of its franchise so approved June 30, 1880, said railway shall also pay to the City of Detroit such taxes for municipal purposes as have been up to this date and shall be thereafter levied and assessed upon the lots and parcels of land and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner and shall be payable at the same time as other city taxes, on lands.

SECTION 3. In adjusting the amount due under the foregoing sections from the first day of July, 1882, to the thirty-first
303 day of December, 1886, the railway shall be credited with all sums heretofore paid by them on account of taxes or percentage on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such amount as shall be found to be due forthwith upon its ascertainment: thereupon all suits and proceedings between the city and the railway shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SECTION 4. The above-mentioned percentage payments and the tax on lands provided for to accrue from January 1, 1887, to the end of the franchise of said railway, are to be paid by said railway and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been, or may be, levied assessed or imposed upon any present or future law of authority.

If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway upon the amount of the percentage payments to become due under this ordinance; and the obligations to make such percentage payments shall be satisfied and discharged to that extent; and, in no event shall said railway be liable to pay under any form of tax, license or charge, any sums in excess of said percentage, and the tax on the lands of said railway as above provided:

304 Provided, however, that nothing herein contained shall be construed as a contract on the part of the Fort Wayne & Elmwood Railway Company to the levying or collecting of any other or further tax, license or charge than the tax on the gross receipts hereinbefore provided for and the tax on its lands as hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of said Fort Wayne & Elmwood Railway Company.

SECTION 5. Subject to the provisions of this ordinance which are only intended to change the ordinance of June 30, 1880, as to the percentage on gross receipts and to modify existing ordinances in reference to the charges by taxation and percentages on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continue- in force.

SECTION 6. This ordinance shall take effect when the Fort Wayne & Elmwood Railway Company has filed its written acceptance of the same with the city clerk.

Spur Track on East Lafayette Street.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved January 10, 1887:

SECTION 1. Subject to the existing provisions and requirements of chapter ninety-nine (99) of the Revised Ordinance- of the City of Detroit, 1884, and of the supplementary ordinance in said
305 chapter contained and all amendatory ordinances thereto, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and operate a single street railway track in East Lafayette street, in the city of Detroit, from a point one hundred and ten feet east of the east line of Randolph street to and so as to connect with the track of said company on Randolph street, the curve of said track at the intersection of said streets to run in a southerly direction.

SECTION 2. The right to amend or repeal this ordinance is hereby reserved.

SECTION 3. This ordinance shall take effect when the said railway company shall have filed with the city clerk its written acceptance of the terms thereof.

Extension of Line on Champlain Street to Easterly City Limits.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved August 20, 1888:

SECTION 1. That, subject to each and all of the existing provisions, regulations and requirements of chapter ninety-nine (99) of the Revised Ordinance- of the City of Detroit for the Year 1884, and of the supplementary ordinance in said chapter contained, and of all ordinances amendatory thereof, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use a street railway track thereon, to maintain and operate street railway cars upon and along the following avenue and street in the city of Detroit, namely:

306 Commencing at and connecting with the present easterly terminus of the street railway track of said company near the junction of Champlain street and the Boulevard, and running

thence easterly upon and along Champlain street to the easterly city limits.

SECTION 2. That, in addition to the provisions, regulations and requirements mentioned in the preceding section, the consent, permission and authority hereby given and granted are so granted and given, subject to the following conditions and limitations, with which the said company must and shall comply, namely:

1. The street railway track hereby authorized to be laid constructed and maintained shall be made a single track, with suitable and convenient turnouts, side tracks and switches, and shall be laid and maintained in the center of the street.

2. The said company shall complete the work of laying and constructing the street railway tracks hereby authorized, and shall have the same in operation and use within one year after the passage of this ordinance.

307 SECTION 3. The street railway track heretofore laid and constructed by said company under the provisions of the several ordinances mentioned in section 1, and the street railway tracks authorized to be laid and constructed by this ordinance, when completed shall be deemed one railway, and the route of such railway shall commence at either of the western termini thereof or within the city limits, from thence running along the line of said railway, as heretofore, hereby or hereunder established, to the easterly city limits; and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously, either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents.

SECTION 4. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall execute and deliver to the controller of the city of Detroit a good and sufficient bond to the city in the sum of ten thousand dollars, to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance; provided, that such acceptance and bond shall be filed within thirty days after the passage of this ordinance.

Champlain Street and East Fort Street Lines.

The following ordinance, applying to and governing the Fort Wayne and Elmwood Railway Company, was approved by the common council January 3, 1889:

308 SECTION 1. Subject to the ordinance- of Detroit, now in force relative to the Fort Wayne & Elmwood Railway Company, except so far as they may be modified by this ordinance consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use street railway tracks, and thereon to maintain and operate street railway cars, upon and along the following streets, avenues and places in the city of Detroit, namely:

Commencing at and connecting with the railway track of said company at the junction of Woodward avenue and Fort street run-

ning thence along and on the Campus Martius to the north part of Cadillac square; thence along and upon the north part of Cadillac square to Bates street, thence along and upon Bates street to the railway track of said company on Randolph street.

Also commencing at and connecting with the railway track of said company at the junction of Randolph and Champlain streets, running thence upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also commencing at and connecting with the railway track of said company at the junction of Champlain street and Mt. Elliott avenue, running thence upon and along Mt. Elliott avenue to Fort street, thence upon and along Fort street to Baldwin avenue, thence along and upon Baldwin avenue to Champlain street, there connecting with the railway track of said company to be built on said street.

Also commencing at and connecting with the railway track of said company at the junction of Champlain street and Helen avenue, running thence upon and along Helen avenue to Jefferson avenue;
309 thence, with the consent of the Detroit City railway first obtained, upon the tracks of the Detroit City railway upon and along Jefferson avenue to the junction of Jefferson and Frontenac avenues; thence to a point at a convenient distance from the Belle Isle Park bridge, to be fixed by the board of public works.

Also an additional track on Champlain street from Elmwood avenue to Mt. Elliott.

SECTION 2. All of the railway tracks hereby authorized to be laid and maintained shall be laid and maintained in the center of the street or avenue, except upon and along the Campus Martius and Champlain street, wherein the location of said tracks shall be established by the board of public works, who are hereby authorized and required to determine the line or location of such tracks upon and along the Campus Martius and Champlain street as shall in their judgment be deemed best for the public convenience, and at the same time secure to said company the full enjoyment of the rights and privileges hereby granted.

SECTION 3. The lines of street railway hereby authorized shall be single-track roads, with turnouts, side tracks or switches, except upon Champlain street, between Elmwood avenue and Mt. Elliott avenue, where an additional track is authorized (but without side tracks, turnouts or switches), and on Helen avenue and between Jefferson avenue and the Belle Isle Park bridge, where the railway shall be a single-track road with suitable and convenient side tracks, turnouts and switches. All side tracks, turnouts and switches
310 shall be removed from Croghan street, from Randolph street to McDougal avenue, those remaining to be used only for the private convenience of said company, and the street railway on Croghan street shall be made and continue a single-track road, without side tracks, turnouts or switches except as above provided.

SECTION 4. The said company shall complete the work of laying and constructing the railway tracks hereby authorized, and shall

have the same in operation within one year after the passage of this ordinance: Provided, however, that the railway track upon and along Fort street, between Mt. Elliott and Baldwin avenues, shall be laid, constructed and in use within one year after that portion of Fort street shall be open for public use.

SECTION 5. The street railway tracks heretofore laid and constructed by said company under the provisions of the ordinance mentioned in section 1, and the street railway track authorized to be laid by this ordinance, shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof, at or within the city limits, from thence running along the lines of said railway, as hereinbefore and hereby established, to the eastern termini thereof, and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously either way over the whole or any portion thereof, shall pay only one fare, the amount of which shall not exceed five cents: Provided, however, that said company shall issue and sell tickets at the rate of eight tickets for twenty-five cents, said
311 tickets to be good for transportation over the entire route of said company, or any portion thereof, traveled continuously either way, between the hours of 5.30 and 7 o'clock a. m. and 5.15 and 6.15 p. m. each ticket to be good for one fare, and this provision to become operative within sixty days after the passage of this ordinance.

SECTION 6. The said company is hereby authorized to use in operating its street railway, electricity or any proper or suitable motive power used by any other street railway company now or hereafter organized and operating in the city of Detroit, subject, however, to the same conditions and limitations. The said company shall run its cars at the average rate of speed of not less than six miles per hour, nor more than ten miles per hour, unless otherwise required by the common council.

SECTION 7. The said company shall have the right to run and operate its street railway cars across Belle Isle Park bridge whenever any other street railway company shall be granted the right so to do, with the same conditions and privileges as shall be accorded to such other company.

SECTION 8. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall have executed and delivered to the city of Detroit a good and sufficient bond in the penal sum of twenty thousand dollars ($20,000) to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance.

312 *Double Track on Fort Street West from Clarke Avenue to City Limits.*

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council September 1, 1891:

SECTION 1. That, subject to the provisions and requirements of existing ordinances, and such additions and amendments as may be made thereto, *that* consent, permission and authority be and the same *is* hereby given to the Fort Wayne and Elmwood Railway Company to lay, construct and maintain a double track on Fort street, west from Clerke avenue to the westerly city limits, said track to be laid contemporaneously with the paving of said street, and the expense of paving the portions of said street between the outer rails of said track be paid by said company. In case the foundations of the pavement in the remainder of the street is concrete, then the pavement between the outer rails shall have a concrete foundation, and the material of which the surface is paved shall be of the same character as that used in the adjacent portion of the street.

SECTION 2. This ordinance shall take immediate effect.

Double Track on Champlain Street.

The following ordinance applying to and governing the Fort Wayne & Belle Isle Railway Company, was approved by the common council on August 15, 1892:

SECTION 1. Subject to the provisions and requirements of existing ordinances and such amendments and additions as may be made thereto, consent, permission and authority be and the same *is*
313 hereby given to the Fort Wayne & Belle Isle Railway Company to lay, construct and maintain a double track on Champlain street, from Mt. Elliott avenue to Baldwin avenue, said track to be laid contemporaneously with the pavement of said street and the expense of paving the portion of said street between the outer rails to be paid by the company.

SECTION 2. The right to amend or repeal this ordinance in case of its violation by said company is expressly reserved.

SECTION 3. This ordinance shall take effect when the said railway company shall have filed with the city clerk its written acceptance of the terms thereof.

Sale of Certain Tickets on Cars.

The following ordinance, applying to and governing the Fort Wayne & Elmwood Railway Company, was approved by the common council February 4, 1893:

Whereas, section XIX of chapter 110 of the Revised Ordinances of the City of Detroit for the Year 1890, being section 5 of an ordinance approved January 31st, 1865, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interest, welfare and accommodation of the public in relation to the Fort Wayne & Belle Isle Railway Company, is reserved to the common council of the city of Detroit; and

Whereas, section V of an ordinance approved January 3, 1889, with reference to said railway, being a part of chapter 110 of the Revised Ordinances for the Year 1890, provides that said
314 railway company shall issue and sell tickets for fares at the rate of eight tickets for twenty-five cents, to be good for trans-

portation between certain hours each day. It is hereby ordained by the people of the city of Detroit:

SECTION 1. It shall be the duty of the Fort Wayne & Elmwood Railway Company, its successors and assigns, to furnish the conductors of each and every car operated by the said company within the limits of the city of Detroit with tickets to be good for transportation between the hours of 5.30 and 7 o'clock a. m. and 5.15 and 6.16 p. m., each ticket to be good for transportation as provided for in said ordinance. (As amended February 26, 1895.)

SECTION 3. For each and every day in which the said Fort Wayne & Elmwood Railway Company, its successors and assigns, shall neglect to provide tickets for sale to those who shall apply as provided herein, the said company may be complained of as for a distinct offence and punished as hereinafter provided.

SECTION 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by fine not to exceed three hundred dollars and costs, and such fine and costs, when imposed, shall be recovered from the person or corporation so convicted by an action at law in the proper court.

SECTION 5. This ordinance shall take immediate effect.

Filed in clerk's office April 19, 1900.
WALTER S. HARSHA, *Clerk.*

315 *Replication.*

STATE OF MICHIGAN:

The Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
—
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel, Defendants. } No. 3631.

The replication of The Detroit Citizens' Street Railway Company, complainant, to the answer of The City of Detroit, William C. Maybury, and Charles Flowers, defendants.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say- that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and

things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said bill it has already prayed.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitor for Complainant.

Filed May 7, 1900.
WALTER S. HARSHA, *Clerk.*

316 *Stipulation.*

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor; Charles Flowers, Corporation Counsel, Defendants.
No. 3631.

In this cause it is hereby stipulated in open court by and between the respective parties hereto that the answer of said defendants filed herein correctly sets forth copies of all the ordinances adopted by the common council of the city of Detroit, under and by virtue of which the said complainant has acquired its rights, privileges, and franchises to operate its said system of street railway in the said city of Detroit; that in reliance thereon and for the purpose of procuring such money as it was necessary that the complainant should have for the construction, maintenance, repair, reconstruction, and operation of the various lines of railway therein and in said bill of complaint described, the said complainant issued bonds and borrowed thereon the money so needed; that the said complainant, its predecessors and lessors, have issued for the purposes aforesaid bonds amounting in the aggregate to eight million two hundred thousand dollars, payable in gold coin, with semi-annual interest, at the rate of five per cent. per annum; that many of the said bonds mature and will be due and
317 payable within the next three years, and it will be necessary for the said complainant to borrow a considerable amount of money to assist in the payment and retirement of said bonds by the issue of bonds of the same character; that all of said bonds outstanding are secured by mortgages given at various dates, by the terms of which all of the property, rights, privileges, and franchises of the complainant, its lessors and predecessors, including the franchises and rights fixed by the various ordinances and grants, together with all the tolls, fares, issues, earnings, and profits arising therefrom, have been mortgaged to the trustees therein named for the use, benefit, and security of the holders of said bonds; that said bonds have been sold to parties purchasing the same in the full faith and belief that said complainant, its lessors, predecessors, and grantors, had the right to charge the rates of fare fixed by said various ordinances; which said belief on the part of the holders of said bonds

was based upon the existence and terms of said ordinance and not otherwise.

It is stipulated and agreed that this cause may be heard upon the pleadings filed herein and this stipulation, which is submitted as the proofs in the case.

Dated at Detroit, Michigan, May twenty-first, 1900.

BRENNAN, DONNELLY & VAN DE MARK,
Complainant's Solicitors.

JASPER C. GATES,
TIMOTHY E. TARSNEY, *Of Counsel for Def't.*

Filed in the clerk's office May 21st, 1900.
WALTER S. HARSHA, *Clerk.*

318 *Stipulation.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers, Defendants. } No. 3631.

It is hereby stipulated that this cause will be submitted to the court on pleadings and evidence to be taken in open court, and that it be so submitted on the 21st day of May, 1900, at the opening of court on that day or as soon thereafter as counsel can be heard.

May seventh, 1900.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

CHARLES FLOWERS, *Solicitor for Defendant.*

Filed in the clerk's office May 21, 1900.
WALTER S. HARSHA, *Clerk.*

319 *Final Decree.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the twenty-first day of May, in the year one thousand nine hundred.

Present: The Hon. Henry H. Swan, district judge.

THE DETROIT CITIZENS' STREET RAILWAY Company
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, and Charles Flowers.
} In Equity. No. 3631.

This cause came on to be heard at this term upon testimony taken in open court and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, namely:

That the said several ordinances adopted by The City of Detroit, the defendant herein, on the 16th day of August, A. D. 1899, copies whereof are attached to said bill, marked Exhibits A, B 2, C, D, E, and B, impair the obligations of the grants, contracts, rights, and privileges of the complainant under previously adopted valid ordinances of the City of Detroit, contrary to the provisions of article 1, section 10, of the Constitution of the United States, and are wholly and utterly null and void; and it is further ordered and de-
320 creed that the said City of Detroit, its common council, William C. Maybury, mayor; Charles Flowers, its corporation counsel, and each and every of its officers, agents, counselors, and attorneys be perpetually restrained and enjoined in any manner whatever, either by suits or actions or otherwise, from enforcing or attempting to enforce or carry out the provisions or any of them of said ordinances of August 16th, 1899, or either of them.

321 *Claim of Appeal and Order Allowing Same.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel, Defendants.
} No. 3631.

The above-named defendants, conceiving themselves aggrieved by the final decree entered on the twenty-first day of May, A. D. 1900, in the above-entitled cause, do hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, together with the assignments of error and proceedings and the papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Detroit, this 15th day of June, in the year of our Lord nineteen hundred.

CHAS. FLOWERS,
Solicitor for Defendants and Appellants.

TIMOTHY E. TARSNEY,
JASPER C. GATES,
Of Counsel.

322 And now, to wit, on this 15th day of June, in the year of our Lord nineteen hundred, it is ordered that the appeal in the above-entitled cause be allowed as prayed for.

HENRY H. SWAN,
District Judge.

Filed in clerk's office June 15, 1900.
WALTER S. HARSHA, *Clerk.*

323 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel, Defendants. } No. 3631.

Assignments of Error.

And now comes the above-named defendants, by Charles Flowers their solicitor, and say that the circuit judge who rendered the final decree herein erred in the following particulars, to wit:

1. The circuit judge erred in holding that the language employed in the ordinance of November 24th, 1862, constituted a contract with the Detroit City Railway Company to charge the rate of fare therein provided for and during the period of its corporate existence.

2. The said circuit judge erred in holding that the common council of the city of Detroit had power to make and enter into a contract with the Detroit City Railway Company granting therein the right to said railway company to charge the rates of fare in said ordinance specified during the period of its corporate existence.

3. The said circuit judge erred in holding said ordinance
324 to be a contract between the City of Detroit and the said Detroit City Railway Company in relation to the rates of fare therein specified.

4. The said circuit judge erred in holding that the amendatory ordinance-, Exhibits "A," "B," "B 2," "C," "D," & "C," impaired the obligation of contract between the company and the City of Detroit.

5. The said circuit judge erred in granting a perpetual injunction restraining the enforcement of said several ordinances aforesaid.

6. The said circuit judge erred in decreeing that the defendant The City of Detroit should be restrained from exercising and enforcing the legislature powers conferred upon said city by the laws of the State of Michigan.

7. The said circuit judge erred in rendering a decree in favor of complainant and against defendant- herein.

CHAS. FLOWERS,
Solicitor for Defendants.

TIMOTHY E. TARSNEY,
JASPER C. GATES,
Of Counsel.

Filed in the clerk's office June 15, 1900.
WALTER S. HARSHA, *Clerk.*

325 *Bond on Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel, Defendants. } No. 3631.

Know all men by these presents that we, the City of Detroit, William C. Maybury, Charles Flowers, and Timothy E. Tarsney, are held and firmly bound unto the above-named Detroit Citizens' Street Railway Company in the sum of two hundred and fifty dollars, to be paid to the said Detroit Citizens' Street Railway Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-first day of May, in the year of our Lord nineteen hundred.

Whereas the above-named City of Detroit, William C. Maybury, and Charles Flowers have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the judge of the circuit court of the United States for the eastern district of Michigan, southern division:

Now, therefore, the condition of this obligation is such that
326 if the above-named City of Detroit, William C. Maybury, and Charles Flowers shall prosecute said appeal to effect an- answer *of* damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHAS. FLOWERS. [SEAL.]
WILLIAM C. MAYBURY. [SEAL.]
TIMOTHY E. TARSNEY. [SEAL.]
CITY OF DETROIT,
By F. A. BLADES, *Controller.*

We consent to the form and penalty of the above bond, and that the same may be approved.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant and Appellee.

I hereby approve the foregoing security on appeal.
Detroit, June 15th, 1900.

HENRY H. SWAN,
District Judge.

Filed in the clerk's office June 15th, 1900.

WALTER S. HARSHA, *Clerk.*

327 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Detroit Citizens' Street Railway Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Michigan, southern division, in equity, wherein The Detroit Citizens' Street Railway Company is complainant and appellee and The City of Detroit, William C. Maybury, mayor, and Charles Flowers, corporation counsel, are defendants and appellants, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of June, in the year of our Lord nineteen hundred, and of the Independence of the United States the one hundred and twenty-fourth.

[Seal of the Circuit Court, Eastern District of Michigan.]

HENRY H. SWAN,
District Judge.

Attest: WALTER S. HARSHA, *Clerk.*

Rec'd copy of the above citation June 15, 1900.

BRENNAN, DONNELLY & VAN DE MARK,
For Def'd't in Error.

328 [Endorsed:] 3631. United States of America. Detroit Citizens' Street Railway Company, complainant, *vs.* The City of Detroit, William C. Maybury, mayor; Charles Flowers, corporation counsel, defendants. Citation. Filed in clerk's office June 15, 1900. Walter S. Harsha, clerk.

329 *Order Extending Time to Make Return.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Friday, the thirteenth day of July, in the year one thousand nine hundred.

Present: The Honorable Henry H. Swan, district judge.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor; Charles Flowers, Corporation Counsel, Defendants. } In Equity. No. 3631.

Upon application of Walter S. Harsha, clerk, the time to make return to appeal is hereby extended thirty (30) days.

329½ At a session of the circuit court of the United States for the eastern district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Wednesday, the first day of August, in the year one thousand nine hundred.

Present. The Hon. Henry H. Swan, district judge.

DETROIT CITIZENS' STREET RAILWAY COMPANY
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor; Charles Flowers, Corporation Counsel. } In Equity. No. 3631.

Upon application of Walter S. Harsha, clerk, the time to make return to appeal is hereby extended one week.

330 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division. In Equity.

DETROIT CITIZENS' STREET RAILWAY CO.
v.
THE CITY OF DETROIT, WILLIAM C. MAYBURY, Mayor, and Charles Flowers, Corporation Counsel. } No. 3631.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify and return to the claim of appeal of the above-named defendants that the above and foregoing is a true copy of the record and proceedings in said

cause as the same appear on file and of record in my office; that I have compared the same with the original and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, in said district, this 15th day of August, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Seal of the Circuit Court, Eastern District of Michigan.

WALTER S. HARSHA, *Clerk.*

Endorsed on cover: File No., 17,897. E. Michigan C. C. U. S. Term No., 152. The City of Detroit, William C. Maybury, mayor, and Charles Flowers, corporation counsel, appellants, *vs.* The Detroit Citizens' Street Railway Company. Filed September 4th, 1900.

No. 152.

Brief of Tarsney for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor, and
CHARLES FLOWERS, Corporation Counsel,
Defendants and Appellants,

vs.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant and Appellee.

No. 152

MOTION TO ADVANCE AND BRIEF IN SUPPORT OF MOTION.

TIMOTHY E. TARSNEY,
Corporation Counsel,
Solicitor for Appellants.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor, and
CHARLES FLOWERS, Corporation Counsel,
Defendants and Appellants,

vs.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant and Appellee.

MOTION TO ADVANCE AND BRIEF IN SUPPORT OF MOTION.

MOTION.

Complainants and appellants, by Timothy E. Tarsney, their attorney, comes and respectfully moves that the above entitled cause may be advanced on the call, and order of the docket, and the earliest practicable day assigned for its hearing, for the following reasons:

First. Because the cause, as shown by the record, is one of great public interest and importance.

This motion is based upon the abstract of record, filed herein.

TIMOTHY E. TARSNEY,
Corporation Counsel,
Solicitor for Appellants.

BRIEF.

The defendant street railroad company acquired its rights, privileges and franchises by assignment and purchase from the Detroit City Street Railway Company, the Grand River Street Railway Company, the Dix Avenue Railway, and the Highland Park Railway, which said last named companies were all organized under the provisions of chapter 94, Howell's Statutes of the State of Michigan, being section 3495, etc. This act was originally passed in 1855, and did not contemplate the construction of street railways. February 2, 1861, the Legislature amended the act by adding thereto sections 33 and 34, as follows: "It shall be competent for parties to organize companies under this act to construct and operate street railways in and through the streets of any town or city in this State. All companies formed for such purpose shall have the exclusive right to use the same; provided, however, that no such company shall be authorized to construct a railway under this act, through the streets of any town or city, without the consent of the municipal authorities of said town or city, and under such regulations and upon such terms and conditions as the city authorities may from time to time prescribe." Laws '61, pages 11 and 12.

This continued to be the sole provision upon the subject of street railways under this act, until March 27, 1867. Laws '67, p. 257, at which time section 34 was amended by adding thereto the following: "Provided, furher, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the streets, in such consent or grant named, pursuant to the terms thereof." Howell's Sts., Sec. 3527.

This act was approved March 27, 1867, and has remained unchanged until the present day.

November 24, 1862, the common council of the City of Detroit granted to the Detroit City Street Railway Company the franchise of constructing and operating a line of street railway in the City of Detroit. The other companies named afterwards obtained a franchise to construct and operate other lines of street railroad in said city, and in the several ordinances granting such right, there appears this provision: "*The rates of*

fare for any distance shall not exceed five cents in any one car," and in each of said ordinances is the following provision: "It is hereby reserved to the common council of the City of Detroit, the right to make such further rules, orders or regulations as may, from time to time, be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railway."

There is no provision or agreement in any of said ordinances that the rate of fare should continue during the entire period of the franchise of said several companies, unless the same is implied from the language above stated.

The defendant railway company operated under the several franchises assigned to it by the original grantees thereof.

On the 16th day of August, 1899, the common council of the City of Detroit adopted the several ordinances, copies of which are annexed to the bill of complaint as Exhibits "A," "B," "B2," "C," "D," "E," in and by which said several ordinances the common council of the City of Detroit has assumed to fix a rate of fare for the transportation of passengers over the said several lines of railroad other and different from that provided in said original ordinances.

The bill in this case was filed by the street railway company to enjoin the city and its officers from the enforcement of said several ordinances, and an injunction was graned, after hearing in the court below, from which an appeal was taken to this court.

March 5, 1867, an act to provide for the formation of street railway companies was approved, being chapter 95, Howell's Statutes, section 3536, etc. The company is incorporated under this last named act, but, as before stated, its franchise was derived from companies organized under the previous act. By section 13 of the act of March 5, 1867, being section 3548, Howell's Statutes, it is provided that any company, "organized under the provisions of this act, may, * * * construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, as shall be designated and granted from time to time in the ordinance or ordinances granting such consent." Section 14: "After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of street railways therein, or granted any rights or privileges to such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so granted."

Section 20. "The rates of toll or fare which any street railway may charge for the transportation of persons or property over their road, shall be established by agreement between such

company and the corporate authorities of the city or village where the road is located, and SHALL NOT BE INCREASED, without the consent of such authorities."

It is claimed by the city that the provisions in said several ordinances relative to the rate of fare fixed and determined the rate which the then common council of the City of Detroit deemed to be a reasonable rate for the transportation of passengers, and that it did not constitute an agreement or contract that such rates should be continued during the entire life of the corporate existence of said companies, or to such time as the same might be extended; that the provisions in said several ordinances reserved to the common council the right to make such further rules, orders or regulations as may, from time to time, be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railway, reserved to the common council the right to subsequently regulate the rates of fare, and to determine, from time to time, what was a reasonable rate of charge therefor; that the provision in the organic act above quoted, "That no such company shall be authorized to construct a railway under this act through the streets of any town or city, without the consent of the municipal authorities of such town or city, under such regulations and *upon such terms and conditions as the said authorities may from time to time prescribe*," reserved to said authorities a continuing power of regulation and control of the rates of fare upon the street railways in said city.

It will be noticed that the limitation placed upon the power of the authorities by the amendment of 1867, to *make no regulations or conditions*, whereby the rights or franchises so granted shall be destroyed or *unreasonably impaired*. Bearing in mind the general rule that the use of this right is a public use, and the further rule that the compensation for such use must be *reasonable*, it cannot be said that the regulations of fare at a sum that is *reasonable*, is either a *destruction or an unreasonable impairment of the rights and franchises* of such company. So the right to make changes and new regulations is reserved in the act, its only limitation being that such new regulations must be reasonable and not destructive of the rights granted.

The City of Detroit has a population approximating 300,000. The number of miles of railroad, I believe, is 177; many thousands of passengers ride upon these cars every day, not only the inhabitants of the city, but connected with the radiating lines of defendant's system are divers suburban railroads extending a distance from 40 to 60 miles into the country, which run cars into the city over the tracks of the defendant company.

It is believed that this case presents sufficient public interest to warrant us in respectfully requesting the court to advance

the cause to an early hearing, in view of the fact that it would not be reached in its natural order upon the docket, as I am informed, for nearly a year.

Very respectfully submitted,

TIMOTHY E. TARSNEY,
Solicitor for Appellants.

DETROIT:
THOMAS SMITH PRESS.
1901.

No. 152.

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FILED
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JAMES H. McKENNEY

SUPREME COURT

Brief of Defendants Appellants

OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 152.

Filed Sept. 9, 1901.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, *Mayor*,
CHARLES FLOWERS, *Corporation Counsel*,
Appellants,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN—IN EQUITY.

BRIEF FOR APPELLANTS.

TIMOTHY E. TARSNEY,
Solicitor for Defendants and Appellants.

DETROIT:
THE THOS. SMITH PRESS, 42-44 LARNED ST., W
1901.

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 152.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, *Mayor*,
CHARLES FLOWERS, *Corporation Counsel*
Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan—In Equity.

BRIEF FOR APPELLANTS.

STATEMENT OF CASE.

The appellee, as complainant, filed its bill in the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, in Equity, to restrain appellants, defendants therein, from the enforcement of certain ordinances adopted by

the Common Council of the City of Detroit, regulating the rates of fare to be charged upon certain street railways within the limits of said city.

The appellee is organized as a corporation under the provisions of Chap. 95 of Howell's Annotated Statutes of Michigan. In September, 1891, it acquired title by purchase from certain street railway companies then owning the same, certain lines of street railway constructed and in operation in the City of Detroit, and especially the lines of street railway theretofore constructed, owned and operated by the Detroit City Railway, and certain other lines of street railway owned and therefore owned and operated by the Grand River Street Railway Company. (R., p. 2.) The Detroit City Railway and the Grand River Street Railway companies were organized under the provisions of Chap. 94 of Howell's Annotated Statutes. (R., p. 3), and the rights of complainant and appellee are derived through certain ordinances granting to said street railway companies the right to construct and operate street railways in and through the streets of the City of Detroit. The bill also alleges the acquisition by complainant of some other smaller lines of street railway (R., pp. 8-9.), but the principal part of the system owned by complainant was organized under the provisions of Chap. 94 of Howell's Statutes, commonly known as the "Train or Tram-railway" act, being Sec. 3493, etc., of Howell's Annotated Statutes.

November 24, 1862, the Common Council of the City of Detroit adopted an ordinance to permit certain persons to establish certain railroads in the City of Detroit. This ordinance is printed in full in the Record, pp. 27-35, and is the same as referred to in the third paragraph of complainant's bill (R., pp. 2-3), under which the Detroit City Railway Company operated. The Grand River Street Railway ordinance is found on pp. 52-57 of the Record. In Section 8 of the ordinance of November 24, it is provided, that the rate of fare for any dis-

fance shall not exceed five cents on any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for special purposes, provided that the cars so chartered shall not be considered regular cars within the meaning of the section. (R., p. . .)

Identically the same language is used in Section 6 of the Grand River Street Railway ordinance (R., p. 54), and Sec. 8 of the Fort Wayne and Elmwood ordinance, p. 158.

Section 19 of the Detroit City Railway ordinance is as follows:

"Section 19. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interests, safety, welfare and accommodation of the public in relation to said railways."

Section 18 of the Grand River Street Railway ordinance is in identically the same language (R., p. 56). Many supplemental and extension ordinances were afterwards adopted by the Common Council, and all or nearly all contain the same provisions relative to the rates of fare, and reservation of the right to make further rules and regulations.

On the 11th of August, 1899, the Common Council of the City of Detroit, adopted a certain ordinance reducing the rates of fare on the said several lines of railroad, being Exhibits "A," "D 2," "C," "D," "E," and "B" (R., pp. 17-21), whereupon the complainant filed its bill to restrain the enforcement thereof. A restraining order and order to show cause why an injunction should not issue was made by Judge Swan (R., p. 23). Defendants answered, p. 106, and submitted the several ordinances under which said complainant was operating its lines, and it was subsequently stipulated that the case might be heard on evidence and proofs taken in open court (R., p. 173), and a stipulation of facts was made therein (R., pp. 772-773), upon which said cause was heard, and thereafter the court entered a decree that

said several ordinances adopted by the Common Council in August, 1899, impaired the obligations of the grants, contracts, rights and privileges of complainant under previously adopted ordinances, and granted a perpetual injunction (R., p. 174); from this decree defendants appeal.

The several street railroad companies to whose rights and privileges the complainant claims to succeed, namely: The Detroit City Street Railway Company, the Grand River Street Railway Company, the Fort Wayne and Elmwood Railway Companies were all organized under the provisions of Chapter 94, Howell's Statutes, Sections 3495, etc.

This act was originlly passed in 1855 and did not contemplate the construction of street railways.

February 2, 1861, the Legislature amended the act by adding thereto Sections 33 and 34, as follows:

It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State. All companies formed for such purposes shall have the exclusive right to use the same, provided, however, that no such company shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of said town or city, and under such regulations, and upon such terms and conditions as the said authorities may, *from time to time, prescribe.*

Laws of 1861, pp. 11 and 12.

This continued to be the sole provisions upon the subject of street railways in this act until March 27, 1867. Laws of 1867, p. 257, at which time Section 34 was amended by adding thereto the following:

Provided further, that after such consent shall have been given and accepted by the company or corporations to which

the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be *destroyed or unreasonably impaired*, or such company or corporation be deprived of the right of constructing, maintaining and operating such railroad in the street in such consent or grant named, pursuant to the terms thereof. (H. S., Sec. 3527.)

This act was approved March 27, 1867, and has remained unchanged until the present day.

March 5, 1867, an act to provide for the formation of street railway companies was approved, being Chapter 95, H. S., Section 3536, etc.

It will be noticed that the ordinance of November 24, 1862, namely: the Detroit City Railway ordinance, was adopted long prior to the amendment of the Train Railway Act of 1867, and the general law providing for the incorporation of street railway companies. The grantors of the complainant being incorporated under the provisions of Chapter 94, we must look to it as the source from which all the power and authority of the railway company is derived, unless the provisions of the street railway act, H. S., 3564, are to be construed in connection with the act, and which complainants' grantors were incorporated, a question we shall discuss at the proper time.

It will be noticed that several new sections were added to the Tram Railway Act after the enactments of the general street railway law, providing for the corporation of street railways in cities and villages, and particular attention is called to Section 42, being Section 3535, Howell's Statutes, which reads:

"*All the provisions of this act, as amended, shall be applicable to all corporations now organized under this act as though specifically named.*"

The Tram Railway law is the last legislative declaration upon the subject, and under well recognized rules of statutory construction, being the last, it controls all former provisions in the

same or any other law, and specific methods of regulation having been provided for in the act of 1861, namely: "Such regulations * * * as said authorities may, *from time to time*, prescribe," must control the relation between the city and the street railway company.

This provision will be more fully discussed hereafter.

I.

THE COMMON COUNCIL OF DETROIT POSSESSED NO AUTHORITY TO PASS THE VARIOUS ORDINANCES UNDER WHICH THE COMPLAINANT IS OPERATING ITS ROAD, EXCEPT SUCH AS WAS CONFERRED UPON IT BY EXPRESS GRANT OF THE LEGISLATURE OF THE STATE OF MICHIGAN.

And such grant did not authorize the Common Council to make an irrevocable contract in relation to the rates of fare.

In People's Railroad Co. vs. Memphis R. R. Co., 10 Wall., 38 (844), the mayor and aldermen of the City of Memphis invited bids for the construction of a railroad in certain streets of the city; and they awarded the contract to two persons whose bid was made in their own behalf and as agents of certain associates, afterwards constituted the People's Passenger Railroad Company of Memphis; with the understanding that the conditions of the contract as made and accepted should not be changed. The railroad company thereby claimed that they were invested with a franchise that neither the Legislature nor the City Council, nor any other party, could constitutionally invade. Afterwards the Legislature of the State of Tennessee incorporated the Memphis City Railroad Company, and expressly authorized it to construct, maintain, use and operate street railways by animal power in all or any of the streets of the City of Memphis, to use for that purpose the necessary machinery and equipments, and to make, complete and execute all con-

tracts and agreements made with the city or other parties, for any purpose connected directly or indirectly with the construction, maintaining or operating of such railway, and to alter or enlarge the terms of the same with the said parties. Under this authority the Memphis City Railroad Company proceeded to construct a railroad, when they were stopped by the city authorities. The company thereupon filed a bill against the city, and the People's Railroad Company intervened, claiming that it had acquired rights under the previous arrangement with the mayor and aldermen which amounted to a contract that could not be impaired. Mr. Justice Clifford in the opinion, in speaking of the claims of the People's Company, said: "They insist that the exclusive right to construct railroads for the transportation of passengers over the streets of that city, and to use the streets for that purpose, was granted by the city authorities, to certain individuals as directors, before the respondents were incorporated, and that they (the respondents) with the consent of the city subsequently became the assignee of that contract and agreement, and as such were and are invested with authority to complete and execute that contract and agreement as ratified and confirmed by the Legislature. None of the elements of that proposition are admitted by the complainant, but they insist that municipal corporations have no power to grant such a franchise to individuals or other corporations, unless thereunto *especially authorized* by the Legislature. And they also insist that no such power is shown to have been conferred in this case.

"Power to make laws is vested in the Legislature, under the Constitution of the State, and it is very doubtful whether the legislative department can delegate to any other body or authority the power to grant such a franchise, as the exercise of that power involves a high trust created and conferred for the benefit of those who granted it, and as the trust is confided to the Legislature, it must remain where it is vested until the Constitution

of the State is changed." Cooley, Const. Lim., 117; Thorne vs. Cramer, 15 Barb., 112; Barto vs. Himrod, 8 N. Y., 483; Parker vs. Com., 6 Pa., 507; Sedgw. Con., 165; Wayman vs. Southard, 10 Wheat., 46.

Franchises, it is conceded, cannot as a general rule, be granted by such a corporation, and it is clear that the privilege of making a railway or turnpike, or establishing a ferry and making tolls for the use of the same, is a franchise as the public have an interest in the same, and the owners of the privilege are liable to answer in damages if they refuse the use of the same, without any reasonable excuse, upon being paid or tendered the usual fare. 3 Kent, Com. (11th ed.), 590; Willoughby vs. Horridge, 16 Eng. L. & E., 437; Beekman vs. S. & T. R. R. Co., 3 Paige, 45.

IV. Consonant with that view this court held, in the case of Bk. of Augusta vs. Earle, 13 Pet., 595, that franchises are special privileges conferred by the government on individuals, and which do not belong to the citizens of the country generally of common right; and that in this country no franchise can be held which is not derived from the law of the State. Ang. & Ames, Corp. (8th. ed.), 2; State vs. Armstrong, 3 Sneed, 634; Mayor vs. Shelton, 1 Head, 24.

Contracts, undoubtedly, may be made by such municipalities, to the extent of the authority conferred for that purpose by the Legislature, but the granting of a franchise is not the same thing as a contract, and the exercise of such a power cannot be upheld or vindicated as falling within the same rule as the power to make contracts.

By the amendment to their charter, passed February 13th, 1854, the authorities of the city were empowered to regulate the laying of railroad iron and the passage of railroad cars through the city; but the better opinion is that the provision in that behalf relates to the construction of railroad tracks and the running of railroad cars through the city by incorporated com-

panies whose cars are propelled by steam, and that it has no reference whatever to the construction or authorization of a street passenger railway within the corporate limits, as claimed by the respondents in their answer. Sess. Laws, 1854, p. 294; Moses vs. Railroad Co., 21 Ill., 522.

Authority is also conferred on municipal corporations by the Code of that State, "to grant privileges in the use and enjoyment of the streets" of the municipality; but it would be a very forced construction to hold that the grant of such a franchise for twenty-five years is included in the provision. Code (1858), p. 303.

V. Independently of those provisions, it is quite clear that the municipal authorities of the city possessed no such power as is supposed by the respondents. Such corporations are usually invested with the power to lay out, open, alter, repair and amend streets within the corporate limits; but the rule is well settled that by virtue of those powers, without more, they cannot grant to an association of persons the right to construct and maintain for a term of years a railway in one of the streets of the municipality for the transportation of passengers for private gain, and that an ordinance or resolution of the authorities granting such a right is void. Davis vs. Mayor, N. Y., 14 N. Y., 514.

Special powers are given to such corporations to lay out, open and repair streets, as a trust to be held and exercised for the benefit of the public, from time to time, as occasion may require, and the general rule is, that those powers cannot be delegated to others, nor be effectually abridged by any act of the municipal corporation without express authority from the Legislature. Milhau vs. Sharp, 27 N. Y., 611; People vs. Kerr, 27 N. Y., 188; Elliott vs. F. & W. R. R., 32 Conn., 579; Wager vs. R. R., 25 N. Y., 526; People vs. R. R., 45 Barb., 63; Street Railway vs. Cummingsville, 14 Oh. St., 523; State vs. Hoboken, 1 Vroom, 225.

Municipal corporations are, doubtless, invested with subordinate legislative powers, to be exercised in the passage of ordinances for local purposes connected with the public good, but they are merely derivative, and are subject at all times to legislative control. 2 Kent. Com., 11th ed., 317; Rogers vs. Burlington, 3 Wall., 663 (70 U. S., XVIII., 82.)"

In Wright vs. Nagle, 101 U. S., 791 (921), the facts were: In July, 1851, the Inferior Court of Floyd County, Georgia, entered into a contract with one Miller, by which for a good and valuable consideration it granted to Miller and his heirs and assigns, so far as it had authority for that purpose, the exclusive right of opening ferries and building bridges across certain rivers, at Rome, within certain specific limits. Miller, on his part, bound himself by certain covenants and agreements appropriate to such contract. Miller afterwards assigned his rights, so that when this suit was commenced Wright and Shorter were the owners. Large amounts of money were expended in building and maintaining the required bridges, and the franchise is a valuable one. In 1872 the Commissioner of Roads and Revenue for the county authorized the defendant to erect and maintain a toll bridge across one of the rivers within the limits of the original grant to Miller. Wright and his associate brought suit in equity to restrain defendant from constructing such a ferry.

By an act of the Legislature of Georgia the inferior courts in the several counties were empowered if they shall deem it necessary to authorize the establishment of such ferries or bridges as they may deem necessary, other than car ferries and bridges authorized or established by law, and to allow such rates for crossing thereat as are usual and customary on water courses of the same width. By another act they were given power and authority to hear and determine all matters which may come before them relative to roads, bridges, etc., as are authorized by law; and to have power to establish ferries and rates of toll

to be taken. Mr. Chief Justice Waite said: "It has been decided in Georgia that the right to receive toll for the transportation of travellers and others across a river on a public highway, is a franchise which belongs to the people collectively. Young vs. Harrison, 6 Ga., 130. A grant of this franchise from the public in some manner is therefore necessary, to enable an individual to establish and maintain a toll-bridge for public travel. The Legislature of the State alone has the authority to make such a grant. It may exercise this authority by direct legislation or other agencies duly established, having power for that purpose. The grant, when made, binds the public and is directly or indirectly the act of the State. The easement is the legislative grant, whether made directly by the Legislature itself, or by any one of its properly constituted instrumentalities. The complainants' claim that they have such a grant through the agency of the Inferior Court acting under the authority of the Legislature. This is denied, because, as is insisted, the Legislature has not given the court the power to make an *exclusive* grant. * * * We therefore proceed to consider whether the Inferior Court had the power to grant to Miller the exclusive right. It certainly has done so if the power existed. * * * The only question is, whether power for that purpose had been delegated to the Inferior Court." After quoting the statute, the learned judge continued: "Exclusive rights to public franchises are not favored. If granted, they will be protected, but they will not be presumed. Every statute which takes away from the Legislature its power will always be construed most strongly in favor of the State. These are elementary principles. The question here is, whether the Legislature of Georgia conferred on the Inferior Courts the power of contracting away the rights of the State to establish such ferries and bridges in a particular locality as the ever-changing wants of the public should in the progress of time require. In our opinion it did not. It gave

these courts the right to establish ferries or bridges, but not to tie the hands of the public in respect to its future necessities. The right to establish one bridge and fix its rates of toll does not imply the power to bind the State or its instrumentalities not to establish another in case of necessity."

In Saginaw Gas Light Co. vs. The City of Saginaw, 28 Fed. Rep., 529, Judge Brown in an elaborate opinion approved the doctrine as stated by Judge Dillon, that a municipal corporation possesses and can exercise the following powers, and no other:

(1) Those granted in express words;

(2) Those necessarily or fairly implied or incident to the powers expressly granted;

(3) Those essential to the declared object and purpose of the corporation, not simply convenient, but indispensible.

Any fair or reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act or make any contract, or incur any liability not authorized thereby. All acts beyond the scope of the powers granted are void. In this case the Common Council of Saginaw passed an ordinance granting to certain individuals the exclusive right of erecting, maintaining and continuing gas works within the city. In 1886 the Common Council passed another resolution accepting a proposition which had previously been made by the Jenney Electric Light Co., and entered into a contract with the company to light the public streets. Thereupon the gas company filed its bill in this court. Judge Brown said: "That the State, in its sovereign capacity, may grant a monopoly of this description, and that such monopolies will be protected against a subsequent conflicting grant, has lately been settled by the Supreme Court in New Orleans Gas Co. vs. Louisiana Light Co., 115 U.

S., 650; S. C., 6 Sup. Ct. Rep., 252; and Louisville Gas Co. vs. Citizens Gas Co., 115 U. S., 683, S. C., 6. Sup. Ct. Rep., 265. But whether under a charter simply authorizing a municipal corporation "to cause its streets to be lighted," it may grant an exclusive privilege of this description, for a term of years, is a widely different question. Bearing in mind that the powers of the municipality are strictly limited by its charter, it is needful to inquire whether the grant of an exclusive franchise is a proper and reasonable method of exercising its authority to light the public streets, and furnish gas to its inhabitants. We think it entirely clear that the city is not bound to manufacture and furnish the gas itself, but may contract with any individual or company for lighting the city, and, as an incident thereto, may authorize the use of its streets for laying pipes and mains. Indeed, this is not only a usual and convenient mode of exercising its power, but, in the general law for the organization of gas companies, it is expressly provided that such corporation shall have power to lay conductors, etc., with the consent of the municipal authorities of such city, town, or village, under such reasonable regulations as they may prescribe. That is here an implied, if not an express, authority for the city to contract with any corporation which may be organized under the act.

It is clear, however, that there is no authority expressly given to confer upon any corporation the exclusive right to occupy its streets for a number of years. It is true, it may, in effect, grant such exclusive right by refusing to any other company the franchise or privilege it has already granted to one; but this presupposes a continued and abiding consent on the part of the city to keep alive its contract, and is quite distinct from the right of the city to surrender its power to make another contract, and to vest in the plaintiff the right to determine for itself whether a rival company shall be permitted to enter its domain. While there is great force in plaintiff's argument, that individuals would not be likely to incur the great expense of establishing

gas works and laying pipes without some assurance of a profitable and continued employment for a sufficient length of time to remunerate them for their outlay, we think the law is too well settled that this cannot be done, without express permission of the sovereign power, to be now disturbed. If a grant of this kind for thirty years may be supported, why may it not, by parity of reasoning, be upheld for a hundred years, or in perpetuity?

The common law of England declares that monopolies cannot emanate from the Crown, and can only be conferred by Act of Parliament (Bac. Abr. tit. "Monopoly"), and a by-law which creates a monopoly is void (Jac. Law Dict.).

The great weight of authority in this country is in this direction. Thus, in Norwich Gas Co. vs. Norwich City Gas Co., 25 Conn., 19, a municipal ordinance, purporting to grant the exclusive privilege, of laying gas pipes through the streets of a city for a period of fifteen years, was held to give the grantee no interest in the soil, and no title which would enable him to restrain another company from doing the same thing, provided it did not interfere with his works. The court went even further—beyond what we believe now to be the accepted doctrine—and held that the business of manufacturing and selling gas was an ordinary business, in respect to which the government had no exclusive prerogative, and that the legislature itself had no power to amend the plaintiff's charter, so as to give it the exclusive privilege claimed.

We are not, however, without the authority for our proposition, that nothing will be intended from a legislative grant to a municipal corporation.

In Minturn vs. Larue, 23 How., 436, it was held, that a charter authorizing the City of Oakland to establish and regulate ferries, or to authorize the construction of the same, gave no power to the city to grant an exclusive privilege. In delivering the opinion Mr. Justice Nelson observed:

"It is a well settled rule of construction of grants by the legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act, or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the legislature must be resolved in favor of the public."

In the case of Wright vs. Nagle, 101 U. S., 791, to which reference has already been made, it was held that legislative power given to an inferior body to establish ferries and bridges did not authorize such body to grant the exclusive right to one person, though there was no doubt that the legislature itself had authority to make such a grant. The case is upon all fours with the one under consideration.

The same question was argued with great skill and thoroughness in State vs. Cincinnati Gas Light & Coke Co., 18 Oh. St., 262. In this case the charter conferred on the gas company power "to manufacture and sell gas, to lay pipes," etc., provided the consent of the City Council be obtained for that purpose. Under a power given to the City Council of Cincinnati, "to cause said city, or any part thereof, to be lighted with oil or gas," and to levy a tax for that purpose, it contracted to invest the defendant with the full and exclusive privilege of using the streets, etc., for the purpose of lighting the city for the period of twenty-five years, and thereafter, until the city should purchase the works. It was held that, while there was no doubt that the city might by contract provide for the lighting by gas, there was no necessity for making such right exclusive, and that the city had no authority to make the grant.

So, in Richmond Co. Gas Light Co. vs. Middleton, 59 N. Y., 228 the board of the town corporation was authorized to cause the streets to be lighted with gas whenever they deemed it necessary, and required the board to contract with the plaintiff com-

pany to supply the same with gas. This was held by the Court of Appeals not to confer the power on the board to make a contract which should be binding on the town for a *fixed term of years*, and that the contract was terminated by the repeal of the act under which it was made.

Other analogous cases are to the same effect:

Dogan vs. Pyne, 43 Iowa, 524, in which an exclusive grant to one person to run omnibuses was held not to be the valid exercise of a power to "license, tax, and regulate omnibuses."

Jackson County Horse R. Co. vs. Rapid Transit Co., 24 Fed. Rep., 306. In this case it was held by Judge Brewer, that, in the absence of express authority in its charter, the City of Kansas had no power to grant to a street railway company the sole right, for the space of twenty-one years, to construct, maintain, and operate their railway over and along the streets of said city."

[In City of Detroit vs. The Railway Company, 95 Mich., 456, a case where the Fort Wayne & Belle Isle Railway Company was compelled by an ordinance of the City of Detroit to sell to persons applying therefor upon all of its cars tickets to be good for transportation over its entire system, the Court said: "Ordinances containing grants are construed liberally in favor of the public."]

In People vs. Detroit Citizens' Street Railway Co., 116 Mich., 132, the Common Council of the City of Detroit adopted an ordinance requiring the Street Railway Co. to "provide sufficient cars upon Gratiot avenue, so that a six-minute service shall be given upon said avenue between Mack and Sheridan avenues between the hours of 5:30 a. m. and 10 p. m." Mr. Hutchins, the vice-president of the company, was prosecuted for the violation of this ordinance, and set up in his defense that said ordinance impaired the contractual relations existing between the city and the company under the

provisions of Section 7 of the ordinance of November 24, 1862, which reads:

Sec. 7. "The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the Common Council shall prescribe. Provided always that said council shall not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April."

The Court said:

"It is said that the ordinances of 1862 and 1873 constitute a contract between the city and the Street Railway Company, and that 'the ordinance of 1879 was not a new grant or a new consent. It was confessedly an extension of the old grant of consent, upon the terms and conditions of the old consent, except in so far as those terms were readjusted'—citing Detroit Citizens' Street Railway Co. vs. City of Detroit, 13 C. C. A., 365 (26 L. R. A., 667). It is now urged that as the city agreed by the provisions of Section 7 of the ordinance of 1862, not to require the company "to run regular cars oftener than twenty minutes during fourteen hours every day from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April," by reason of its contract with the company the city cannot now require the company to run cars oftener than once in twenty minutes. All of these provisions in the various ordinances, so far as they appear in the record, relating to the frequency with which cars shall be run, the rate of speed, and the motive power allowed, have already been quoted.

In construing these ordinances it may be worth while to inquire into the situation when they were passed. Detroit, in 1862, was a city of about 50,000 people. Its residents all lived within a comparatively short distance of the business center. A street railway was comparatively unknown. It was yet in an experimental stage. No more practical method of furnishing motive power was known than the use of animals. It was believed that a speed not exceeding 6 miles and hour, and cars run not more frequently than three times an hour for fourteen hours in the day part of the year, and twelve hours a day for the remainder of the year, would answer the convenience and demands of those who were likely to be patrons of the road. The franchise conferred by the ordinance of 1852 would end by its terms in 1892. In 1879, the population of the city was upwards of 100,000 people, and the city was growing rapidly. Street railway systems were no longer experiments. A franchise like that conferred by the ordinance of 1879, in a city like Detroit, was known to be an exceedingly valuable thing. The ordinance of 1879, by its terms, gave the company a franchise for thirty years. Improved methods of motive power were coming into vogue. Portions of the residence part of the city were much farther from the business center than in 1862. The public demanded quicker and more frequent service then than it had earlier. Is it likely that, under such circumstances, the council would confer a franchise for thirty years over the principal streets of a great and growing city, with a limitation that the city shall not require the running of cars oftener than three times an hour, and not at all for ten hours of the day for part of the year, and twelve hours a day for the remaining portion of the year? On the other hand, is it probable that the railway company would be willing to accept an ordinance running for thirty years which limited it to animal power in the trans-

portation of its cars, and to a speed of six miles an hour? We think this contention is unreasonable, and that the ordinance of 1879 was given and accepted with the understanding of all parties to it that the provison in section 4, "that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order should control."

It strikes me that the question involved in this controversy is settled in favor of appellants by the decision of this court in Freeport Water Co. vs. City of Freeport, 21, Sup. Ct. Rep., 493. The court will pardon me, if for personal convenience I refer thereto and to the statutes and ordinances therein considered:

"An Act to enable cities and villages to contract for a supply of water for public use, and to levy and collect the tax to pay for water so supplied. Approved April 9, 1872.

"Sec. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That in all cities and villages where water-works may hereafter be constructed by an incorporated company, the city or village authorities in such cities and villages may contract with such incorporated company for the supply of water for public use, for a period not exceeding thirty years."

The authorities of the City of Freeport adopted an ordinance granting to Nathan Shelton or his assigns, the exclusive right and privilege for the term of thirty years from the 1st of July, 1882, of supplying the City of Freeport and the citizens thereof with water. Sec. 2, after reciting for the use of streets, etc., recites that: "All the rights and liabilities provided for in this ordinance shall continue for a period of thirty years unless sooner extinguished by *purchase*, as hereinafter provided."

Sec. 7 provided for the payment of a fixed sum as the annual rental for hydrants, and declared that said rentals shall be payable semi-annually, * * * "and shall continue for the full term specified in this ordinance, unless said city shall sooner become the owner of said water-works, as hereinbefore provided, in which event said rental shall cease."

Sec. 13, declared that the ordinance shall become binding as a contract upon the written acceptance thereof by the grantee. * * * "and this ordinance when so accepted shall not be altered, amended or changed in any way, without the concurrence or consent of both parties thereto and interested therein, or their successors or assigns."

This Court, in its majority opinion, said:

"The statutes are certainly ambiguous, and in resolving the ambiguity in favor of the public, the court applied the rule declared in many cases. We said in the Railroad Commission cases, 116, U. S., 307, by Chief Justice Waite, of the power of the regulation of rates:

" 'This power of regulation is a power of government, continuing in its nature, and if it can be bargained away at all, it can only be by words of positive grant, or something which is in law equivalent. If there is a reasonable doubt it must be resolved in favor of the existence of the power. In the words of Chief Justice Marshall, in Providence Bank vs. Billings, 4 Pet., 514, 'its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear.' This rule is elementary, and the cases in our reports where it has been applied and considered are numerous."

These remarks are obviously applicable to the Illinois statutes. The question is whether the power given to the municipalities of the state shall be continuing or occasional, indeed only special in its purpose, intended to have but one

exercise, and then bound in contract for thirty years. *If the latter had been the intention it would have been natural to express it.*" * * * There is no explicit provisions for repetitions of the power,—none declaring the power conferred a continuing one. Who now doubts that it is? * * * Our conclusion is that the powers conferred by the statutes of 1872 can, without straining, be construed as distributive. The city council was authorized to contract with any person or corporation to construct and maintain water-works, "at such rates as may be fixed by ordinance, and for a period not exceeding thirty years." The words, "fixed by ordinance," may be construed to mean by ordinance once for all to endure during the whole period of thirty years; or by ordinance from time to time as might be deemed necessary. Of the two constructions that must be adopted which is the most favorable to the public, not that one which would so tie the hands of the council, that the rates could not be adjusted as justice to both parties might require at a particular time."

Indeed, Mr. Justice White, in his dissenting opinion, agrees to the rule we contend for. He said:

"It is unquestioned also that where a right asserted, if enforced will put a contractual limitation upon the power of the law-making authority of the State, presumably to be exercised for the public benefit, the doubt is to be resolved in favor of the continued existence of the law-making power. In other words, that no contract limitation on the powers of government can be upheld by mere implication, or sustained if there be doubt on the subject. The existence of such a contract relation must arise clearly and by express intendment."

Again, in Rogers Park Water Co. vs. Fergus, 21. Sup. Ct. Rep., 490, Mr. Justice White said:

"Of course it is conceded under the rule of construction set by me in my dissent in the Freeport case, that if doubt arose from an analysis of the provisions of a contract, that doubt must be solved against the Water Co. in favor of the municipality."

Whatever ambiguity may have existed in the statutes of the State of Illinois, surely no ambiguity exists in the language of the Tram-railway Act of the State of Michigan, as it is expressly provided therein that no such company or corporation shall be authorized to construct a railway under this Act, through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities *may from time to time prescribe.*" This surely is a continuing power of regulation, and nothing is contained therein from which a grant of authority to the municipality to make an irrevocable contract can be implied. A contract for a fixed and definite period would be in violation of the letter and spirit of the statute, which contemplates the power of continuing regulation. And the Street Railway Act, being Chap. 95 of Howell's Annotated Statutes, will not bear any other or different construction. Not a word can be found in it from which the implication may arise that it was the legislative intent to confer upon the common council of the city the power to make a time contract; indeed, the implication is the other way. By Sec. 20, the rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and *shall not be increased* without the consent of such authority. Why prohibit the increase of the rate of fare, and not prohibit the

decrease? Unless the power to decrease or to make regulations from time to time was recognized as existing.

A reference to the laws under which the Street Railway Companies are organized and operate, and the Ordinances of the City of Detroit with them, clearly demonstrate that no contractual relation of a fixed or permanent character exists between the City of Detroit and the Detroit Citizens Street Railway Company The original companies of which the present Detroit Citizens' Street Railway is a successor, were organized under the provisions of the Train or Tram Railway Act, Howell's Statutes, 3495-3535. [By Section 3527, as amended by the Laws of 1867, page 257, it is provided that "All companies or corporations formed for such purpose shall have exclusive right to use and operate any street railways constructed under or held by them; provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe; provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be *destroyed or unreasonably impaired*, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the streets, in such consent or grant named pursuant to the terms thereof."] It will be noticed that the limitation placed upon the power of the authorities is to make *no regulation or conditions* whereby the rights or franchises so granted shall be *destroyed or unreasonably impaired*. Bearing in mind the general rule, that the use of this railroad is a Public Use, and the further rule, that the

compensation for such use must be *reasonable*, it cannot be said that the regulations of fares at a sum that is *reasonable* is either a *destruction or unreasonable impairment of the rights and franchises* of such company. So the right to make changes and new regulations is reserved in the act itself,—the only limitation being, that such new regulation must be *reasonable* and *not destructive* of the rights granted. [So that the provisions of Section 19 of the Ordinances, by which it is reserved to the Common Council the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railway, is only declaratory of the rights and powers reserved in the Common Council by the act of incorporation itself. This view was taken by the Supreme Court of this State in City of Detroit vs. Railway Company, 95 Mich., 456, where both the statute and the reservation in the ordinances is quoted by the learned Judge who delivered the opinion.

City of Lansing vs. Lansing City Electric Railway Company, 109 Mich., 123, was mandamus by the City of Lansing to compel the railroad company to pave with brick between its tracks. Section 12 of the Lansing Ordinances contains the same reservations of power in the Common Council as Section 19 in the Ordinances under consideration here. The court said it was the plain duty of the railway company when ordered by the Council, to repave with bricks to comply with the resolution.

It will be borne in mind that the Detroit City Railway Company, the Fort Wayne & Elmwood Co. and the Grand River Street Railway were all incorporated under the provisions of the Train Railway Act of 1855; and are subject to its provisions. In 1867, the legislature passed the Street Railway Act, Sections 3536, etc., H. S. By Section 13 of the

Act of 1867, being Section 3548 of Howell's Statutes, it is provided that "Any company organized under the provisions of this act may * * * construct, maintain, use and own a street railway for the transportation of passengers in and upon the lines on such streets and ways as shall be designated and granted from time to time in the ordinance or ordinances granting such consent. Section 14, "After any city, village or township shall have consented, as in this act provided to the construction and maintenance of street railways therein, or granted any rights and privileges to such company, and such consent and grant having been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so granted." Section 20, "The rates of toll or fare which any street railway may charge for the transportation of persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and *shall not be increased*, without the consent of such authorities. Mark the difference between the two acts. By section 34 of the Train Railway Act, being the amendment of 1867 supra, it is provided that the railway company may operate under such regulations and upon such terms and conditions as the authorities *may from time to time prescribe*." And further, that after the acceptance by the company the authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be *destroyed or unreasonably impaired*. In the Street Railway Act the language is, "That after the company shall accept it, such township, city or village shall not *revoke* such consent, nor deprive the company of the rights and privileges so conferred. In view of the fact that the rates of toll to be charged are specifically referred to in Section 20, under the well recognized rules of statutory

construction, that "*particular or specific words or provisions will control the general words or provisions of the same act* (23 A. & E. Enc. L. 427-8), the rates of toll were not intended to be included in the terms rights and privileges used in Section 14, but the legislative intent apears to have been to deal with the *rates of toll* separate and distinct from the *other* rights and privileges conferred upon said companies by the provisions of the sections. And it will be noted in Section 20, that "such rates of toll shall not be *increased* without the consent of such authorites." This implies that the legislature, by Section 20 of the Act of 1857, while prohibiting the railway from increasing the rates of toll, fully understood that the authorities might decrease such rates, inacmuch as no inhibition is placed upon the authorities in that regard. This view will become more apparent when we come to consider at a subsequent stage of this discussion the power of the legislature or of the Common Council to bind itself by the fixed and definite agreement for a term of years relative to the rates of fare to be charged.

The provisions of the Street Railway Act, however, become quite immaterial in construing the powers of the present company that it obtained through the purchase of the property or franchise of the Detroit City Railway Company, the Grand River line and the Fort Wayne & Elmwood, because all these companies, as has been stated, were organized under the Train Railway Act, and their powers and their rights must be construed solely with reference to the act under which the original companies were incorporated. So far we are dealing with the interpretation of the Statutes relative to the *powers of the Council to agree upon a particular rate for a definite period of time.*

The case of Detroit Citizens' Street Railway Co. vs. Detroit, 64 Fed. Rep., 628 (26 L. R. A., 627), is in consonance with these views. Judge Lurton said:

"That public streets are a public trust, to be held and preserved for legitimate street uses, is an obvious truth. That the ordinary power to control the public streets usually conferred upon all municipal governments will not justify a diversion to other uses nor support a delegation of the power of control to others, or any abridgement of the legislative authority of the city over the streets, is well settled law. * * * Whether such general powers will authorize a consent in perpetuity or for a definite term is doubtful. The weight of authority seems to be that any grant of an easement for a definite time operates as an abridgement of the legislative power of control over the streets, and would not be an exercise of the legislative powers conferred by the charter. This view is strongly supported by the New York authorities, as well as many others. Davis vs. New York, 14 N. Y., 506; Mithau vs. Sharp, 27 N. Y., 611, 84 Am. Dec. 314; New York vs. 2nd Av. R. Co., 32 N. Y., 272. These cases seem to proceed upon the theory that the grant of any easement in the streets is the conveyance of a property interest commensurate with the purpose for which it is to be used, and therefore irrevocable, unless that power is reserved. In New York vs. 2nd Ave. R. Co., cited above, the court drew a very sharp distinction between the legislative and contractual powers, saying that: "The rights to create and establish ferries and railroad franchises are quite distinct and separate from their duties as legislatures, having authority to pass ordinances for the control and government of persons and interests within the city limits. The latter are powers held in trust, as all legislative powers are, to be used and exercised for the benefit and welfare of the whole community, while the former are property, in the ordinary sense, to be acquired and conveyed in the same manner as natural persons acquire and transfer

property, and subject to the operations of such ordinances and by-laws as may be lawfully passed." 32 N. Y., 271.

It is to be also observed that the early decisions of that state did not recognize a street railway as an ordinary street use, but a new burden upon the fee. The cases are reviewed in Fobes vs. Rome, W. & O. R. Co., 121 N. Y., 505, 8 L. R. A., 453. Other cases holding that the general power of controlling the streets will not support a consent to their use in perpetuity or for a term of years are People's Pass. R. Co. vs. Memphis, 4 Coldw., 406; Louisville City R. Co. vs. Louisville, 8 Bush., 415; Eichels vs. Evansville Street R. Co., 78 Ind., 261; State vs. Trenton, 36 N. J. L., 79; Nash vs. Lowry, 37 Minn., 263; Lake Roland Elev. Co. vs. Baltimore, 77 Md., 352, 20 L. R. A., 126. The question is an open one in Michigan. In view of the strong constitutional policy of that state in favor of local control of matters purely local, to be hereafter more fully referred to, it is not impossible that the courts of Michigan, if the occasion shall arise, will refuse to follow the New York cases, in view of the widely differing policies of the two states in the matter of legislative control over purely municipal interests

We do not think it necessary to decide this question, inasmuch as the case must turn upon a consideration of other legislation more definitely bearing upon the power of the city to grant a vested easement.

In the interpretation of the legislation hereafter to be considered, we shall make further reference to these charter powers; but we shall, for the purposes of this case, assume that further power was necessary to support a permission to use the streets granted for a term of years."

Again, "To the practical operation of a street railway, three things were essential under the law of Michigan. These were:

First. Corporate capacity; this, because under the law of that statute there seems to have been no provision by which natural persons could directly acquire the other requisite franchises.

Second. A franchise to operate the road *and take tolls.*

Third. A right to occupy particular streets with the necessary tracks and equipments.

These three requisites are distinct and separable. The first two are essentially franchises which could only come from the state; the third and equally essential requisite could not come from the state, and, if acquired at all, must come from the municipality within which it was proposed to exercise its substantial franchises. This conclusion is rested on the limitation imposed upon the legislative powers of the state concerning purely municipal interests."

This case turned upon the construction of the word "consent," contained in the street railway statute, and was limited by Judge Larton to its application to a right to occupy particular streets with the necessary track and equipments, and did not embrace the two first propositions, viz.: First, the corporate capacity, and, second, to operate the road and take tolls. He says:

"Our conclusion upon this branch of the case is:

"First. That the legislature meant, by the term 'consent,' no more and no less than would be meant by 'right of way' or 'easement.' 'Consent,' in the connection used, is synonymous with 'easement' or 'right of way.'"

The Learned Judge seemed to be strongly impressed with the ideas of home rule or local self government. After quoting certain constitutional provisions, he says:

"From these constitutional limitations a policy favorable to local self government is plainly deducible; and, in the interpretation of legislative provisions designed to confer

power over purely local concerns, consideration should be given to this state policy, as well as to the fact that the legislature ought, in the interest of local government, to confer a wide discretion upon municipalities, being itself incompetent to legislate directly upon such concerns. It is evident *that the legislature* could not grant to any street railway the right to construct and operate its road upon any particular street. It may provide for the incorporation of such companies, and endow them with the franchises necessary. For the necessary *street rights* they must be referred to the only authority which can grant such privileges,—the local government of the municipality in which it is proposed to operate such road."

This was decided in 1894. Two years later the Detroit Citizens' Street Railway Company, in Street Railway Company vs. City of Detroit, 110 Mich., 384, filed a bill in the state court against the City of Detroit and the Detroit Railway, to restrain the city and the Detroit Railway from carrying out the provisions of an ordinance for the construction and operation of a street railway line. The complainant company claimed to have a prior right to construct and operate a street railway in such streets by virtue of an ordinance of the city of November 24, 1862,—the same ordinance that is in controversy here. The grantees are, by the provisions of the second section of this ordinance *exclusively* authorized to construct and operate railways as herein provided. The contention of the plaintiff was the same as its contention here, that the adoption of the two ordinances giving to the Detroit Railway the right to build its railway in certain streets was in violation of the exclusive grant to the complainant under the ordinance of November 24, 1862.

The holding of the court in that case was against the contention that the city possessed any inherent power over its

streets, the court holding that municipal corporations derive their sole source of power from legislative enactment; that the policy of local self-government is fully discussed by Mr. Justice Lurton in the preceding case, did not obtain to the extent to which the Learned Judge in that case held, and after thoroughly discussing the Train Railway Act and Street Railway Act, the court said:

"We think the act in question cannot be construed as conferring the power upon the Common Council to grant such a privilege as that which was attempted to be conferred by the ordinance of 1862. Certainly there is no express grant of the right to confer exclusive privileges, nor do we think there is any clear implication of any such power arising out of the terms of the act. There is a limitation upon the right of the company to construct a railway, which is that, before doing so, the company shall procure the *consent* of the municipal authorities *under such regulations and upon such terms and conditions* as said authorities may from time to time prescribe. Fairly construed, this language relates to the terms and conditions to be prescribed for the *contemplated occupancy of the streets*, the use of which is presently contemplated by the parties to the contract, and the 'terms and conditions' relate to such occupancy of such streets. A broader construction is contended for, and it is said that the power to make *terms and conditions* carries with it an implication of power to make all *terms and conditions* relating to the subject matter necessary to effectuate the subject of the legislation."

Had this case been decided before the one in the Federal Court, and the state policy clearly announced, it is very probable that under the rule that United States courts follow the ruling of the state court in the construction of state statutes, the decision in the Federal case would have been otherwise. Surely, if under the doctrine of the Michigan case the city could not grant the exclusive right for a term

of years to this railway company, it certainly could not grant the right to a fixed and definite rate of fare for a like term of years. If, as Judge Lurton said, the right to take tolls is a franchise which comes from the state, and if the words "consent" and "terms and conditions" relate to occupancy of streets, as held in both of the above cases, then they are not broad enough to cover the franchises which Judge Lurton says may come from the state alone.

This Court, in Detroit Citizens' Street R. Co. vs. Detroit Railway, 171 U. S., 48, construed the ordinance of November 24, 1862, under consideration here. It was there claimed that the Railway Co. acquired the exclusive right to own and operate railways in the streets of the City of Detroit; the ordinance assumed to give such rights. (See Sec. 2, R., p. 27.) This Court said:

"It is clear that the statute did not explicitly and directly confer the power on the municipality to grant an exclusive privilege to occupy its streets for railway purposes. It is urged, however, that such power is to be inferred from the provision which requires the consent of the municipal authorities to the construction of a railway under such terms as they may prescribe, combined with the provisions of the Constitution, which if they do not confer a power independent of the legislature, strongly provide for and intend local government. The argument is strong, and all of its strength has been presented and is appreciated, but there exist considerations of countervailing and superior strength. That such power must be given in language explicit and express, or necessarily to be implied from other powers, is now firmly fixed. There were many reasons which urged to this—reasons which flow from the nature of the municipal trust—even from the nature of the legislative trust, and those which, without the clearest intention explicitly declared, insistently forbid that the future

should be committed and bound by the conditions of the present time and functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges. The rule and the reason for it are expressed in:

> Minturn vs. Larue, 64 U. S., 23 How. 436 (16:575);
> Wright vs. Nagle, 101 U. S. 791, (25:921);
> State (Atty. Gen.) vs. Cincinnati Gaslight & Coke Co., 18 Ohio St. 262;
> Parkhurst vs. City of Salem, (Parkhurst vs. Capital City R. Co. 23 Or. 471), 32 Pac. 304;
> Saginaw Gaslight Co. vs. Saginaw, 28 Fed. 529, decided by Mr. Justice Brown of this court;
> Long vs. Duluth, (49 Minn. 280), 51 N. W. 913;

See also:

> Grand Rapids Elec. Light & Power Co. vs. Grand Rapids Edison E. L. & Fuel Gas Co., 33 Fed. 659, opinion delivered by Mr. Justice Jackson at circuit.

As bearing on the rule, see also:

> Oregon Railway & Nav. Co. vs. Oregonian Railway Co., 130 U. S. 1 (32:837);
> Central Trans. Co. vs. Pullman's Palace Car Co., 139 U. S. 24 (35:55).

The power therefore, must be granted in express words or necessarily to be implied. What does the latter mean? Mr. Justice Jackson, in Grand Rapids Electric Light & Power Co. vs. Grand Rapids, Edison E. L. & Fuel Gas Co., supra, says: "That municipal corporations * * * possess and can exercise only such powers as are 'granted in express words, or those necessarily or fairly implied in or incident to the powers expressly conferred or those essentials to the declared objects and purposes of the corporation, not simply convenient, but indispensable.'" The italics are his. This would make "necessarily implied" mean inevitably implied. The Court of

Appeals of the Sixth Circuit, by Circuit Judge Lurton, adopts Lord Harwicke's explanation, quoted by Lord Eldon, in Wilkinson vs. Adam, 1 Ves. & B., 466, that a "necessary implication means, not natural necessity, but so strong a probability of intenton, that an intention contrary to that, which is imputed to the testator (the party using the language), cannot be supposed." If this be more than expressing by circumlocution an inevitable necessity, we need not stop to remark; or if it mean less, to sanction it, because we think that the statute of Michigan, tested by it, does not confer on the Common Council of Detroit the power it attempted to exercise in the ordinance of 1862. To refer the right to occupy the streets of any town or city to the consent of its local government was natural enough—would have been natural under any Constitution not prohibiting it, and the power to prescribe the terms and regulations of the occupation derive very little, if any, breadth from the expression of it. But assuming the power to prescribe terms does acquire breadth from such expression, surely there is sufficient range for its exercise, which stops short, or rather does not extend to granting an exclusive privilege of occupation. Surely there is not so strong a probability of an intention of granting so extreme a power that one contrary to it cannot be supposed, which is Lord Hardwicke's test, or that it is indispensable to the purpose for which the power is given or necessarily to be implied from it, which is the test of the cases. The rule is one of construction. Any grant of power in general terms read literally can be construed to be unlimited, but it may, notwithstanding, receive limitation from its purpose, from the general purview of the act which confers it. A municipality is a governmental agency—its functions are for the public good, and the powers given to it and to be exercised by it must be construed with reference to that good and to the

distinctions which are recognized as important in the administration of public affairs.

Easements in the public streets for a limited time are different and have consequences from those given in perpetuity. Those reserved from monopoly are different and have different consequences from those fixed in monopoly. Consequently, those given in perpetutity and in monopoly must have for their authority explicit permission, or, if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indspensable to them."

II.

THE TERMS EMPLOYED IN THE VARIOUS ORDINANCES DO NOT CONSTITUTE A CONTRACT. THE LANGUAGE EMPLOYED TO MAKE A CONTRACT MUST BE OF SUCH A CLEAR AND UNAMBIGUOUS CHARACTER THAT IT WILL ADMIT OF NO REASONABLE CONSTRUCTION CONSISTENT WITH THE RESERVATION OF THE POWER.

The Detroit Citizens' Street Railway Company is operating under the following ordinances:

Detroit City Railway Company, R., page 29; Grand River Street Railway Company, R., page 54; Dix Avenue Railway, R., page 63; Highland Park, R., page 67, and is controlling either by purchase or lease, the Fort Wayne & Elmwood Railway, R., page 158.

All rates of fare provided in these several ordinances for any distance *shall not exceed five cents in any one car.*

By Section 19, "It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railway."

These several ordinances are entirely silent concerning any power reserved in the Common Council to amend or repeal, except such reservation as is contained in Section 19 aforesaid. We need not now deal with the question whether it would be competent for the Common Council to change the rates of fare in the case like that of the Detroit Railway Company, where it is expressly agreed that during the continuance of the term for which the franchise is granted that the rates of fare shall not be reduced, but for the present shall only deal with the question whether the existing ordinances constitute a contract between the city and the railway company, that the railroad company may charge such rates of fare as it may see fit to adopt, not exceeding the maximum rate specified in the ordinances. Our contention is that the ordinances do not constitute such contract. If it were competent at all for the Common Council to make a valid and binding arrangement with the railway company by which, for a fixed and definite term of years, the rates of fare should not be reduced, that the right of the city to regulate fares for the time being surrendered, the language employed must be of such clear and unambiguous character that it will admit of no reasonable construction consistent with the reservation of the power, for it is a well settled rule, as will be hereafter shown, that all intendments and construction must be in favor of the public and against the contention of the railroad company. Stone vs. Trust Co., 116 U. S., 636.

It is now settled in this court that a state has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter, or unless what is done amounts to a regulation of foreign or interstate commerce. Baltimore & Ohio Railroad Company vs. Maryland, 21 Wall, 456; C., B. & Q. R'y. vs. Iowa; P. Peik vs. Chi-

cago & N. W. R'y. Co., and Winona and St. Peter R'y. Co. vs. Blake, 94 U. S., 155; Ruggles vs. Ill., 108 U. S., 531.

This power of regulation is a power of government, continuing in its nature; and if it can be bargained away at all; it can only be by words of positive grant or something which is in law equivalent. If there is reasonable doubt, it must be resolved in favor of the existence of the power. In the words of Chief Justice Marshall, in Providence Bank vs. Billings, 4 Pet., 560. "Its abandonment ought not to be presumed in a case in whch the deliberate purpose of the state to abandon it does not appear."

This rule is elementary, and the cases in our reports where it has been considered and applied are numerous. Thus, in Providence Bank vs. Billings, it was held that the incorporation of a bank without any special provision for taxation did not imply a contract on the part of the state not to tax at all.

In Charles River Bridge vs. Warren Bridge, 11 Pet., 419, the court said this rule of construction was not confined to the taxing power, and accordingly it held that the charter of a toll bridge company did not imply a contract not to allow the building of another bridge in the immediate vicinity which would materially interfere with its revenues. In delivering the opinion of the court, Chief Justice Taney used this language:

"This act of incorporation is in the usual form, and the privileges such as are commonly given to corporations of that kind. It confers on them the ordinary faculties of a corporation for the purpose of building the bridge, and establishes certain rates of toll which the company are authorized to take; this is the whole grant. There is no exclusive privilege given to them over the waters of Charles River, above or below the bridge; no right to erect another bridge themselves nor to prevent other persons from erecting one; no

engagement from the state that another shall not be erected, and no undertaking not to sanction competition, nor to make improvements that may diminish its income."

In Minott vs. P. W. & B. R'y. Co., known as the Delaware Railroad Tax Case, 18 Wall., 206, it was held that a provision in the charter that the railroad company "should pay annually into the treasury of the state a tax of one-quarter of 1 per cent on its capital stock of $400,000," without any words "indicating the intent of the legislature that no further or different tax should be subsequently levied," was not sufficient to show a contract binding the state not to make such a levy; the court remarking that "The surrender, when claimed, must be shown by clear and unambiguous language which will admit of no reasonable construction consistent with the reservation of the power." So in Bailey vs. Magwire, 22 Wall., 215, it was held that a clause in a charter which subjected a corporation to taxation at the rate assessed by the state on other real or personal property of like value, did not relieve the company from taxation for other than state purposes. And here the court said:

"Silence on such a subject," that is to say, taxation for other purposes, "cannot be construed as a waiver of the right of the state in this regard. There must be something said which is broad enough to show clearly that the legislature intended to relieve the corporation from a part of the burdens borne by other real or personal property."

In Fertilizing Co. vs. Hyde Park, 97 U. S., 660, it appeared that a company had been incorporated with authority to establish and maintain for fifty years, "chemical and other works at the place designated * * * for the purpose of manufacturing and converting dead animals and other animal matter into an agricultural fertilizer, or into other chemical products, by means of chemical or other processes;" but this court held

that the state was not thereby prevented from causing the works to be abated in case they should, within the time of the charter, become a public nuisance because of the growth of population in the neighborhood; and among the reasons assigned for the absence from the charter of any express exemption of the company from the operation of the powers of the state, applicable to its existing condition for the time being.

In Newton vs. Com'rs, 100 U. S., 548, the seat of justice of a county had been fixed at Canfield, but the statute by which this was done provided, "that before the seat of justice shall be considered permanently established at Canfield," the citizens should donate a lot and make certain provisions for the erection of public buildings thereon. The citizens complied with all the requirements of the law, and the seat of justice remained undisturbed at the place where it had been "permanently established," until 1874, when a law was passed for its removal to another town. The citizens of Canfield then caused a bill to be filed for an injunction restraining the county commissioners from effecting the removal, on the ground that the original Act and what was done under it constituted an executed contract on the part of the state that the seat of justice should remain forever at Canfield, and the latter act impaired the obligation of that contract; but the court held otherwise, saying, among other things:

"If the legislature had intended to assume an obligation that it should be kept there in perpetuity, it is to be presumed it would have said so. We cannot, certainly not in this case, interpolate into the statute a thing so important which it does not contain."

In Georgia R. R. & Banking Co. vs. Smith, 128 U. S., 174, by an Act of the Legislature of Georgia, passed December 2, 1833, the railroad company was incorporated under the name

of the Georgia Railroad Company, and empowered to construct a rail or turnpike road from the City of Augusta, with branches extending to certain towns in the state, and to be carried beyond those places in the discretion of the company.

The 12th section of the charter, among other things, declares that, "The said Georgia Railroad Company shall, at all times, have the exclusive right of transportation or conveyance of persons, merchandise and produce, over the railroad and railroads to be by them constructed, while they see fit to exercise the exclusive right; provided, that the charge of transportation or conveyance shall not exceed fifty cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every one hundred miles; and five cents per mile for every passenger.

In 1879 the legislature passed an act providing for the appointment of a commission to regulate tariffs, etc. This commission prescribed rates for the transportation of freight and passengers by railroad companies in the state which were less than the maximum of the rates authorized by the 12th section of the charter of the company. The company filed its bill against the railroad commissioners and the attorney general of the state, contending, among other things, that the charter of the company is a contract between it and the state of Georgia, and that by it the company has the right to charge any rates for freight and passengers not exceeding those limited in the 12th section of the charter, and that the act of October 14th, 1879, is in conflict with the clause of the Constitution of the United States, which prohibits a state from passing any act impairing the obligation of a contract. They prayed that the bill might be declared null and void, and inoperative against them, and that the commission may be enjoined from prescribing rates of fare over the railroad of

the company and its branches, or from otherwise enforcing the provisions of the act. To this bill the defendants demurred. The court sustained the demurrer and dismissed the bill. The case was taken to the Supreme Court of the state and the decree was affirmed. It was then removed to the Supreme Court of the United States.

Mr. Justice Field, in delivering the opinion of the court, said referring to the charter: "It contains no stipulation, nor is any implied, as to any future action of the legislature. If the exclusive right remains undisturbed, there can be no just ground of complaint that other limitations than those expressed are placed upon the charges authorized. It would require much clearer language than this to justify us in holding that, nothwithstanding any altered conditions of the country in the future, the legislature had, in 1833, contracted that the company might, for all time, charge rates for transportation of persons and property over its line up to the limits there designated.

It is conceded that a railroad corporation is a private corporation, though its uses are public, and that a contract embodied in terms in its provisions, or necessarily implied by them, is within the constitutional clause prohibiting legislation impairing the obligations of contracts. If the charter in this way provides that the charges, which the company may make for its services in the transportation of persons and property, shall be subject only to its own control up to the limit designated, exemption from legislative interference within that limit will be maintained. But to effect this result, the exemption must appear by such clear and unmistakable language that it cannot be reasonably construed consistently with the reservation of the power by the state. There is no such language in the present case. The contention of the plaintiff in error therefore fails, and the judgment must be affirmed.

In L. & N. R. R. Co. vs. Ky., 161 U. S., 685 (854), the original charter of the L. & N. Co., granted in 1850, authorized the company to construct a road from Louisville to Nashville; but with no power to extend its lines, or to purchase lines, or to consolidate with other roads. The charter contained no reservation of power to alter or amend. By an Act of March 7th, 1854, the company was given power to *unite* their road with any other road connecting therewith, upon such conditions as the two roads might agree upon. The court held, that the important power to purchase or consolidate with another line cannot be inferred from any such indifferent language as "to unite or connect with such road." Mr. Justice Brown, in delivering the opinion of the court, said: "In construing this section we are bound to bear in mind the general rule so often confirmed by this court, that 'all doubts with regard to authority granted in a corporation charter are to be resolved against the corporation, and that a surrender of the power of the legislature in any matter of public concern must not be presumed from uncertain or equivocal expressions."

In Wheeling vs. Belmont Bridge Co., 138 U. S., 287 (967), the Bridge Company contended that a contract existed between the citizens of Virginia and the defendant, that it should have and enjoy during its charter existence the exclusive privilege of transporting persons across the Ohio River, *at all points within half mile of the location of the ferry;* that the State of Virginia became a party to the contract, and is bound by it; but, that the legislature of the state, not regarding its obligation, in March, 1882, passed an act providing that a corporation might be formed for the purpose of erecting and maintaining toll bridges over the Ohio River, and that no ferry privileges or franchises should preclude the location of such bridge or bridges or entitle the owner to damages by reason thereof. The Bridge Company claimed that

the act of West Virginia was unconstitutional and void, as impairing the obligation of the contract between West Virginia and Virginia and the company. Mr. Justice Field, in delivering the opinion of the court said: "Nor did the charter of the defendant contain any inhibition upon the state to authorize the establishment of another bridge within the distance claimed, whenever the public interest should require it. To allege surrender or suspension of the power of government respecting any matter of public concern, must be shown by clear and unequivocal language. It cannot be inferred from any inhibition upon particular officers, or special tribunals, or from any doubtful or uncertain expression. As was said in substance in the case of Charles River vs. Warren Bridge, 36 U. S. (11 Peters), 425, "Whenever it is alleged that the state has surrendered or suspended its power of improvement for public accommodation on any important line of travel along which a great number of persons must daily pass, the public has a right to insist that its surrender or suspension shall not be admitted in a case in which the deliberate purpose of the state to make such render does not appear. (Referring to several adjudications of this court in support of the doctrine.) And whatever of exclusiveness there was in the privilege extended by the act of 1840 within a half mile on each side of that established ferry, *was repealed in 1882*. From that time the defendant could claim no exclusive privilege to transport passengers, etc., over the Ohio River within the distance mentioned in the repealed statute, even if it could have done so before."

In Slidell vs. Grandjean, 111 U. S., 412 (321), the court said: "It is a familiar rule of construction, that where a statute operates as a grant of public property to an individual or a relinquishment of the public interest, and there is a doubt as to the meaning of its terms or as to its general purpose,

that construction should be adopted which will support the claim of the government rather than that of the individual. Nothing can be inferred against the state. As a reason for such a rule it is often stated, that such acts are usually drawn by interested parties, and they are presumed to claim all that they are entitled to. The rule has been adopted and followed by this court in many instances in the construction of statutes of this description." (Pages 329-30.)

In Minott vs. P. W. & B. Ry. Co., 85 U .S. (888), 18 Wall. 206, it was contended by the company, that the provision in the act of Delaware by which the W. & S. Railroad Company was united with the D. & N. R. R. Co., that the new company "should pay into the treasury of the state a tax of one-quarter of one per cent on its capital stock of four hundred thousand dollars," being accepted by the stockholders of the two companies by their union into one company, constituted a contract between the new company and the State of Delaware which precluded that state from imposing any greater or different tax upon the capital stock of the new company. They contended that a charter of a private corporation was a contract between the state and the corporation, and within the provision of the Constitution inhibiting the legislature from impairing the obligation of contract. Mr. Justice Field said, "But before any such exemption or limitation can be admitted the intent of the legislature to confer the immunity or prescribe the limitation must be clear beyond a reasonable doubt. All public grants are strictly construed. Nothing can be taken against the state by presumption or inference. The established rule of construction in such cases is that 'rights, privileges, or immunities not expressly granted are reserved.' There is no safety to the public interest in any other rule; and with special force does the principal upon which the rule rests apply when the right, privilege or immunity claimed calls for an

abridgement of the powers of government or in restraint upon their exercise. The power of taxation is an attribute of sovereignty, and is essential to every independent government. As this court has said, 'The whole community is interested in retaining it undiminished, and has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon does not appear.' If the power were not already adjudged, it would admit of careful consideration whether the legislature of the state can surrender this power and make its action in this respect binding upon its successors, any *more than it can surrender its police power or its right of eminent domain.* In the same opinion, Mr. Justice Field cites with approval the case of Commonwealth vs. Bank, 10 Penn., 451. In that case the Eastern Bank had been chartered under the general law which prescribed the payment of taxes on its dividend at a fixed rate. A subsequent statute increased that rate, and it was argued as here, that the designation in the original act created a contract on the part of the state that no additional tax should be laid, and that the later acts therefore impaired the obligation of contract. But the court held, that the designation in the original act was nothing more than a simple declaration of the tax then to be paid by the Bank, and did not give the slightest intimation of an agreement or an understanding that the tax should not be increased during the existence of the charter. "To deduce from promises so insufficient a consequence of such magnitude, would indeed be a gross violation of the wholesale principle that, an abandonment of the power of taxation is one to be established by clearly showing this to have been the deliberate purpose of the state."

In Bailey vs. Maguire, 89 U. S., 215 (858), a suit in equity was brought by foreign stockholders to restrain the collection of certain taxes in Missouri assessed against the Pacific Rail-

road Co. by the county assessors for the year 1869, on the ground that the property of the company is exempt from all taxation, except a state tax, to be ascertained and paid in a particular manner. This exemption was claimed under the Act of December 25th, 1862, which amongst other things provided, that the road shall be exempt from taxation until the same shall be completed, opened and in operation and shall declare a dividend; when the equipment shall be subject to taxation at the rate assessed by the state on all other real and personal property of like value. The question presented in this case was, whether the state was precluded from providing another mode of valuation for state taxes. Mr. Justice Davis, writing the opinion, said: "While it were better for the interests of the community that this power should on no occasion be surrendered, this court has always held, that the legislature of the state, unless restrained by constitutional limitations, has full control over the subject, and can make a contract to exempt its property from taxation, either in perpetuity or for a limited period of time. If, however, on any fair construction of the legislation there is a reasonable doubt whether the contract is made out, this doubt must be resolved in favor of the state. In other words, the language used must be of such a character as, fairly interpreted, leaves no room for controversy. It is conceded that this exemption is not granted in express terms, but it is argued, that taking the whole section, it arises by necessary implication. We do not think so." * * *

In Covington & L. Turnpike Road Co. vs. Sanford, 164 U. S., 578 (560), decided in October, 1896, the General Assembly, by an act approved May 24th, 1890, made it unlawful to demand, charge, collect or receive tolls in excess of rates specified in that act. The company announced its purpose to disregard the provisions of the act, and to charge such tolls

as was prescribed by the prior statute. The appellees, who were people who were living on or near the turnpike road, were accustomed to travel on it daily, brought this suit for an injunction restraining the appellant from exacting tolls in excess of those fixed by the act of 1890. A temporary injunction in accordance with the prayers of the petition was granted, and the company filed its answer. The principle questions are:

(1) Whether the act of 1890 impairs the obligation of any contract that the turnpike company had with the state touching the matter of tolls;

(2) Whether, independently of any question of contract, the act made such a reduction in tolls as to amount to a deprivation of the company's property without due process of law. * * * The Covington & Lexington Turnpike Co. was incorporated by an act approved in 1834; with authority to construct a turnpike. By the 19th section of the act, the company was authorized to collect certain specified tolls. The 20th section provided, that if at the expiration of five years after the said road has been completed, it shall appear that the annual net dividends for the year next preceding of said company upon the capital stock expended upon said road and its repairs shall have exceeded the average of 14 per cent. per annum, then and in that case, the legislature reserves to itself the right upon the facts being known, to reduce the rate of toll so that it shall give that amount of dividend per annum, and no more."

Mr. Justice Harlan, giving the opinion, said: "Whatever authority therefore the General Assembly had by statute to regulate the tolls of the plaintiff in error, arise from the general power to regulate the affairs of a corporation which came into existence under its authority; and which owned and controlled a highway established for the public use."

Was the Covington & Lexington Turnpike Road Co. entitled under its charter to be exempt from legislation that would prevent it from earning at least 14 per cent. upon the capital stock expended upon said road and repairs, as prescribed in the act of 1834?

"An exemption or immunity from taxation so vitally affects the exercise of powers so essential to the proper conduct of public affairs and to the support of government, that immunity or exemption from taxation is not sustained unless it has been given in language clearly and unmistakably evincing the purpose to grant such immunity of exemption. All doubts upon the question must be resolved in favor of the public. * * * * The same principle should be recognized when the claims is of immunity or exemption from legislative control of tolls to be exacted by a corporation established by authority of law for the construction of a public highway. It is of the highest importance that such control should remain with the State, and it should never be implied that the legislative department intended to surrender it. Such an intention should not be imputed to the legislature if it be possible to avoid doing so by any reasonable interpretation of its statutes. It is as vital that a State should retain its control of tolls upon the public highway, as it is that it should not surrender or fetter its power of taxation. * * * It is settled law, that in grants by the public, 'nothing passes by implication;' and if a contract with the State relating to the exercise of franchises is susceptible of two meanings, the one restricting and the other extending the powers of a corporation, that construction is to be adopted which works the least harm to the State. * * * Nor ought this Court, in the absence of express enactment after a lapse of more than half a century with legislation not only severing the old corporation, but regulating the rate of toll of these roads, hold that this immu-

nity from legislative interference was a perpetual right in the nature of a contract that could not be disturbed. For the reasons stated, we are of the opinion, that when the act of 1890 was passed, the power of the General Assembly over the subject of tolls to be exacted by the plaintiff in error was not impaired or restrained by any contract with the state with reference to the amount which the company might earn from the use of its road."

In Stein vs. Bienville, Water Supply Co., 141 U. S., 36 (622), a grant under legislative authority of an exclusive privilege for a term of years to supply the municipal corporation and its people with water drawn by means of a system of water-works from a particular stream or river, was held, not to prevent the State from granting to other persons the privilege of supplying during the same period the same corporation and people with water drawn in like manner from a different stream or river. The Court said: "If the contract under which the plaintiff claims was doubtful in its meaning, the result would not be different; for, while it is the duty of the courts not to defeat the intention of the parties to a contract by a strained interpretation of the words employed by them, it is a settled rule of construction, that 'In grants by the public nothing passes by implication; and if on a fair reading of the instrument reasonable doubts arise as to the particular interpretation to be given to it, these doubts are to be resolved in favor of the State; and where it is susceptible of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State. Guided by this rule—in respect to which there is no difference of opinion in the courts of this country—we are forbidden to hold, that a grant under legislative authority of an exclusive privilege for a term of years of supplying a municipal corporation and its people with water, either by a particular sys-

tem of waterworks or from a particular stream or river, would prevent the State from granting to other persons the privilege of supplying during the same period the same corporation and people with water, either in a like manner, or from a different stream or river."

In Winchester & Lexington Turnpike Co. vs. Croxton, 33 L. R. A., 177, Judge Hazelrigg, delivering the opinion of the court, said: "The question on this appeal is whether or not the appellant had a contract with the State entitling it to collect the tolls fixed in its charter of 1834, in spite of the legislative act of 1893, fixing uniform rates for all turnpikes in the State and which are less than those fixed in the company's charter. To the suit of the appellee for moneys collected of him under the charter rates, in excess of the rates fixed by the recent general act, the company answered, relying on Sections 15 and 21 of its charter as showing an irrepealable contract, which sections are as follows:

Section 15. "It shall be lawful for the president and manager * * * to collect and receive of and from all and every person or persons using said roads the tolls and rates hereinafter mentioned, and to stop any person riding, leading or driving any horse, etc., * * * until they shall have paid toll agreeably to the following rates, to wit: For every twenty head of sheep, hogs or other small stock, six and a fourth cents," etc.

Section 21. "And if at any time it shall appear that the clear income and profits will not yield a dividend of 6 per centum per annum on the capital stock so expended from the time of investing the same, that it shall and may be lawful for the president and manager to increase the toll herein allowed, so on each and every allowance thereof, as will raise the dividend up to 6 per centum per annum; and if at any time it shall appear by the said abstracts that the said income and profits will yield a dividend exceeding 12 per centum per annum, then the said tolls shall be reduced so as to reduce the

dividend down to 12 per centum per annum." These are the only provisions particularly pleaded in the answer, though the charter is referred to and made part of the pleading. As explanatory of the reference to certain abstracts in the section last quoted, it is proper to notice Section 20, which reads as follows: "That the president and manager shall, at least once in every year after the company shall be organized, lay before the general assembly of the commonwealth of Kentucky during their session an abstract of their accounts, showing the amount of their capital expended in prosecution of their works and of the incomes and profits, arising from the said tolls for and during the said respective periods, together with an abstract account of the costs and charges of keeping the said road in repair, and all other contingent charges and costs, and such other information respecting the company and their progress as they may think necessary to the end that the clear annual income and profits thereof may be ascertained and known."

"The question is, Do the provisions of the charter evidence an irrevocable contract between the State and the corporation? We have here a private corporation, and the law would ordinarily denominate its charter a contract, within the meaning of the Federal Constitution between the State and the corporation; and any alteration or modification impairing it would be repugnant to both State and Federal Constitutions. Ordinarily, to authorize such alteration, there must be an express reservation of power to make it. But the property of the corporation in this instance, is affected with a public use. Its corporate nature is essentially public, and the rule is, that the charters of such corporations are not protected from legislative interference, unless, in unmistakably clear language, the State has indicated a deliberate purpose not to interfere for all time to come. In the case of private corporations, the reservation, if available, must be expressed in the charter; in the case of public corporations, or

those essentially public, the *reservation is understood*, unless negatived by express words or necessary implication. As said in Delaware Railroad Tax Case, 45 U. S., 18 Wall., 225, 21 L. ed., 894: "The established rule of construction in such cases is that rights, privileges and immunities not expressly granted are reserved." And the language of a company's charter, requiring it "to pay annually into the treasury of the State a tax of one-quarter of 1 per cent. upon its capital stock" was held not to evince an intention on the part of the State to surrender its reserved power to impose, subsequently, a further or different tax. In Stone vs. Farmers' Loan & Trust Co., 116 U. S., 325, 29 L. ed., 642, the language involved was: "That it shall be lawful for the company hereby incorporated from time to time to fix, regulate, and receive the toll and charges by them to be received for transportation of persons or property on their railroad," etc. The contention was, that "the state granted to the company, for the full term of its corporate existence—that is to say, forever—the right of managing its own affairs and regulating its charges * * * free of all legislative control." The claim was denied in an elaborate opinion, citing numerous decisions of that court on the subject which need not be referred to here.

It is true, as noted by counsel, that the court, in the case last cited, said that the power granted was limited by the rule of the common law, which required all charges to be reasonable, and that shall be deemed reasonable in law was nowhere indicated; that no rate was specified, nor any limit set. And it is also true that the State, in the case at hand, did indicate what would be reasonable, and did set a limit; but we cannot agree with counsel that thereby nothing was left for future determination by the legislature. The determination by the State that, for to-day, or for an indefinite time in the future, the charge of 6¼ cents for every twenty head of sheep driven through the gates of the company would be a reasonable charge, is not a final settlement

or determination of what may be reasonable sixty years hence. And the exercise, once, by the State, of the right to fix the rate at what was then deemed reasonable is not, in itself, exhaustive of this power. Admittedly, if the rate fixed is reasonable, the legislature will so declare; but what is reserved? What is it that the public is interested in reserving? Manifestly, that the rate should be reasonable, and what was to be deemed reasonable in the future the legislature was to decide, whenever it chose to act, just as it exercised the right in the first instance. It is precisely as if, in front of the company's charter the State had written: "I grant you the right to charge certain fixed rates, and these may be increased or diminished within certain limits, according as you make 6 or 12 per centum per annum on the capital invested. These rates and the profits are reasonable, but I go no further. I do not say I shall always regard them as reasonable. I reserve, as I do not expressly barter away, the power to provide reasonable rates for the travelling public of the future." If the State had meant otherwise, it would have said that the rates as fixed herein shall remain unchanged forever; and to sustain appellant's contention, these important words must be interpollated into the charter. And this is true, not only with reference to the special rates of toll fixed, but to the specified minimum and maximum rates of interest as well. The fixing of the tolls and the rates of interest allowable was but an expression of the legislative will that such tolls and such rates of interest were for the time being reasonable and lawful; and there is no promise, express or implied, that further and future regulations are finally abandoned by the State. In the Stone Case, 116 U. S., 307, 29 L. ed., 636, are cited cases where the character of the language used imported a contract. Thus, in Gordon vs. Appeal Tax Ct., 44 U. S., 3 How., 133, 11 L. ed., 529, the statute says: "That upon any of the banks in this state complying with the conditions of this act,

the faith of the state is hereby pledged not to impose any further tax or bonus on the said banks during the continuation of their charters under this act." Language equally strong and explici was used in the case of Piqua Branch of State Bank vs. Knoop, 57 U. S., 16 How., 369, 14 L. ed., 977; Proprietors of Bridges vs. Hoboken Land & Imp. Co., 68 U. S., 1 Wall., 116, 17 L. ed., 971; and in Home of the Friendless vs. Rouse, 75 U. S., 8 Wall., 430, 19 L. ed., 495, to indicate that the State meant to preclude itself forever after from legislative interference with rights and privileges granted. We are convinced that the general assembly intended, by the charter in question here, merely to indicate the rates of toll then supposed to be reasonable, and to provide for a like reasonable profit in the way of interest, without abandoning forever its power to exercise control over and limit the rates of toll and the profits of the company in the future.

The doctrines that the State reserved to itself its governmental functions and powers of further regulating the property and franchises of corporations created by it, when the public were affected, was announced as early as in 1830 in the case of Providence Bank vs. Billings, 29 U. S., 4 Pet., 514, 7 L. ed., 939, and we have no reason to believe that the representatives of the State contracted in ignorance of this principle. In Georgia R. & Bkg. Co. vs. Smith, 128 U. S., 174, 32 L. ed., 377, the language of the charter, adopted in 1833, was "that the charge of transportation or conveyance shall not exceed 50 cents per hundred pounds on heavy articles, and 10 cents per cubic foot, on articles of measurement, for every 100 miles; and 5 cents per mile for every passenger." The Supreme Court, by Mr. Justice Field, upheld the legislative act of 1879, empowering commissioners to fix the rates of transportation at less than the maximim of rates authorized by the charter, and, in the course of a thorough review of the question, said: "It (the charter) contains no stipulation, nor is any implied, as to any

future action of the legislature. * * * It would require much clearer language than this to justify us in holding, that, notwithstanding any altered conditions of the country in the future, the legislature had, in 1833, contracted that the company might, for all time, charge rates for transportation of persons and property over its line up to the limits there designated. We have considered the question without reference to the case of Com. vs. Covington & C. Bridge Co., 14 Ky. L. Rep., 836, the principles of which are in fact conclusive of this case. That case was reversed by the Supreme Court (154 U. S., 204, 38 L. ed., 962), because a regulation of the tolls on the bridge spanning the Ohio river was held to affect interstate commerce. It was not deemed necessary by that court to discuss the contract features involved; but, whether we regard the opinion of this court in that case as an authoritative precedent, or merely as an argument, it is this court's latest expression of opinion on the subject involved, and we now approve and follow it.

The suggestion that the company is deprived of its property without due process of law is easily disposed of. No intimation is given in the answer of the company as to what effect the proposed reduction of rates will have on the dividends or property of the company. Manifestly, it does not follow that a reduction of rates will cause a reduction of dividends. It may increase them. But, if we concede that the earnings will be decreased, we are not told to what extent the decrease may go. We cannot assume it will amount to confiscation."

In Omaha Horse Railway Company vs. Cable Tramway Co., 30 Fed. Rep. 324, the plaintiff was incorporated under an act of the Legislature of the Territory of Nebraska, with authority to build and operate a horse railway in the streets of the City of Omaha. The act was a special charter. It was approved February 18, 1867. On the 28th of October, 1868,

the City Council of Omaha passed an ordinance granting the plaintiff the right to lay out, construct and operate railways in the streets of the city. The plaintiff entered upon the construction of its works in due time, and has from year to year extended its lines, and at the time this litigation was brought, had over 18 miles of road in operation, with the necessary equipments of cars, etc.

By Section 5 of the charter the plaintiff was granted the exclusive right for fifty years from the first of January, 1867, to build, erect and operate horse railways within the City of Omaha and five miles adjacent.

The defendant was organized under a general act entitled, "An Act to provide for the incorporation of street railway companies within the cities of this state," approved in 1877.

In 1884, under an ordinance of the city, an election was held at which the people gave their consent to the construction and operation by the defendant of a cable tramway in most of the streets of the city, including those on which the plaintiff had then constructed and was operating its lines. A bill was filed by the horse railway company to restrain the cable company and was heard before Mr. Justice Brewer, who said:

"The contention, however, is that at the time of this grant cable roads were practically unknown; that the only known form of street railways was the horse railway; that the terms "street railroad" and "horse railroad" were in common parlance used to describe the same thing; that in construing the grant we are to place ourselves back to the time at which it was made, and these terms 'horse railroad' and 'street railroad' being then used interchangeably for the same thing, we are to suppose that the Legislature meant by the use of one term all that it would have meant by the use of the other, and that therefore all that would to-day be included within either term was within the scope of the grant. The rule for the construc-

tion of legislative grants is well settled. They are to be construed against the grantee and in favor of the public; and nothing passes unless it is obvious that the intent was that it should pass."

He quotes from Perrine vs. Chesapeake & Delaware Canal Co., 9 How. 172, the language of Chief Justice Taney:

"The rule of construction in cases of this description is this, that any ambiguity in the terms of the grant must operate against the corporation and in favor of the public; and the corporation can claim nothing that is not clearly given by the law. We do not mean to say that the charter is to receive a strained and unreasonable construction, contrary to the obvious intention of the act. It must be fairly examined and considered, and reasonably and justly expounded."

"He who says that the state has given him a franchise, a right to do that which without that franchise he could not do, will be compelled to show that the franchise, the right claimed, is within the terms of his grant.

My conclusion from this consideration is that the term 'horse railway' was not used in this grant as significant of any other form of street railway than that which is now known, strictly speaking, as a horse railroad."

Mr. Justice Brown, sitting in this court, in Saginaw Gas Light Co. vs. City of Saginaw, 28 Fed. Rep. 539, said:

"Nothing is better settled than that statutes creating monopolies, granting franchises, and charters of incorporation, must be construed liberally in favor of the public, and strictly as against the grantee. Monopolies are justly regarded as encroachments upon the natural rights of the people, and are viewed with jealousy by courts. Whatever is not equivocally granted in such act is taken to have been withheld. All acts of incorporation, and acts extending the privileges of incorporated bodies, are to be taken most strongly against the companies.

In regard to the rights of franchises, it is said by the Supreme Court that, where the grant is designed by the sovereign power to be a general benefit and accommodation to the public, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government, and therefore the grant is not to be extended, by implication, in favor of the grantee, beyond the obvious and natural meaning of the words employed. Other authorities, putting it sententiously, say that a doubt is fatal to a grant. Thus, where an act of parliament imposed a penalty on all but freemen of the Waterman's Company, for navigating any wherry, lighter, or *other craft*, on the Thames, it was held that a steam tug was not within the description and prohibition of the act. A corporation is strictly limited to the exercise of those powers which are specially conferred on it. The exercise of a corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and the spirit of the act of incorporation. Beaty vs. Lessee of Knowler, 4 Pet. 152.

In Hamilton Gas Light & Coke Co. vs. City of Hamilton, 146 U. S. 258 (1903) it was said:

It may be that the stockholders of the plaintiff supposed at the time it became incorporated and when they made their original investment that the city would never do what evidently is contemplated by the ordinance of 1889. And it may be that the erection and maintenance of gas works by the city at the public expense, and in competition with the plaintiff, will ultimately impair, if not destroy, the value of the plaintiff's work for the purposes for which they were established. But such considerations cannot control the determination of the legal rights of the parties. As was said by this court in Curtis vs. Whitney, 80 U. S. 13 Wall. 68: "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now

in making a large class of contracts, that they may be affected in many ways by state and national legislation.' If parties wish to guard against contingencies of that kind they must do so by such clear and explicit language as will take their contracts out of the established rule that public grants, susceptible of two constructions, must receive the one most favorable to the public."

And the court in this case re-affirms the doctrine of Stein vs. Bienville Water Supply Company, 141 U. S. 67.

III.

FRANCHISES ARE ALWAYS GRANTED SUBJECT TO THE POLICE POWER.

"The Police Power, in its broadest acceptance, means the general power of the Government to preserve and promote the public welfare, even at the expense of private rights."

Cooley's Constitutional Limitations, 6th Ed., p. 704.

Blackstone defines the Public Police and Economy to be "the due regulation and domestic order of the Kingdom, whereby the individuals of the state, like members of a well-governed family are bound to conform their general behavior to the rules of propriety and neighborhood and good manners, and to decent, industrious and inoffensive in their respective stations."

Black. Com. 162.
Cooley's Constitutional Limitations, 4th Ed., 507.

Or, as defined in New Orleans Gaslight Co. vs. Hart, 8 Am. St. Rep. 544, "It may be said to be the right of a city or of a state functionary to prescribe regulations for the good order,

peace, protection, comfort and convenience of the community, which do not encroach on the like powers vested in Congress by the Federal Constitution."

Or, as was said by Chief Justice Shaw, in Commonwealth vs. Alger, 7 Cush. 84, "We think it is a settled principle growing out of the nature of a well-ordered civil state, that the holder of property, however absolute and unqualified his title, holds it under the implied liability that his use of it shall be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious and to such reasonable restraints and regulations established by law as the Legislature under the governing and controlling power vested in them by the constitution may think necessary and expedient."

It is also thus defined: "The conservation of private rights as attained by the imposition of wholesome restraint upon their exercise. Such a restraint as will prevent the infliction of injury upon others in the enjoyment of it." The power of government to impose this restraint is called the Police Power."

Tiedeman's Limitations of Police Power, Sec. 1.

In 8 A. & Eng. Enc. L. 620 it is said: "The rule established in the Dartmouth College case, that the grant of franchise in the charter of the corporation constitutes a contract, the obligation of which cannot be impaired by subsequent legislation, is settled beyond dispute. * * * Cosely allied to the rule are two other principles equally well settled, and so important in their effect upon it, that they may sometimes seem to qualify the rule. Under the first of these principles, every grant or franchise, being in derogation of common right, receives a

strict construction. Under the second, every charter and the grants it contains is accepted subject to the Police Power of the state, which cannot be bartered away. Finally, the right is now commonly reserved in the state constitutions, the general laws, or the charters themselves, to amend or repeal the charters of a private corporation.

So that, in construing the powers granted or reserved in the particular franchises or agreement, we must bear in mind the foregoing limitations.

It is an accepted doctrine of the law, that under its inherent power, the government may regulate, where necessary for the public good, the conduct of its citizens towards each other, and the manner in which each shall use his own property. Where therefore the owner of property devotes it to a use in which *the public has an interest*, to the extent of that interest the owner's use of it may be controlled by law for the public good.

In Munn vs. Ill., 94 U. S., 113, the question to determine was, whether the General Assembly of Illinois had the power to fix by law the maximum charges for the storage of grain in warehouses at Chicago and other places in the State; and Mr. Chief Justice Waite said: "Under the powers inherent in every sovereignty the government may regulate the conduct of its citizens towards each other, and when necessary for the public good, the manner in which each shall use his own property. It has in the exercise of these powers been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a MAXIMUM CHARGE to be made for services rendered, accommodation furnished and articles sold. Down to the time of the adoption of the 14th amendment to the Constitution of the United States, it was not supposed that statutes regulating

the use, or even the price of the use, of private property, necessarily deprived an owner of his property without due process of law. Under some circumstances it may, but not under all. The amendment does not change the law in this particular. It simply prevents the State from doing that which will operate as such deprivation. When the owner of property devotes it to a use in WHICH THE PUBLIC HAS AN INTEREST, he in effect grants to the public an interest in that use, and must to the extent of that interest submit to be controlled by the public for the common good, as long as he maintains the use. He may withdraw his grant by discontinuing the use. The right of property and to a reasonable compensation for its use, created by the common law, cannot be taken away without due process; *but the law itself, as a rule of conduct, may, unless constitutional limitations forbid, be changed at the will of the legislature.* The great office of statutes is to remedy defects in the common law as they are developed, and to adapt them to the changes of time and circumstances. The limitation by legislative enactment of the rate charged for services rendered in a public employment, or for the use of property in which the public has an interest, establishes no new principle in the law, but only gives a new effect to an old one.

In C., B. & Q. R. R. Co. vs. Cutts, 94 U. S., 155 (94), the appellees filed a bill to restrain the enforcement of a certain statute regulating the rates of fare and freight to be taken by railroads in the State of Iowa. Chief Justice Waite also wrote this opinion. He said: "Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers in order that they may better serve the public in that capacity. They are therefore engaged in a *public* employment for the *public interest;* and under the decision in Munn vs. Illinois, just announced, subject to legislative control as to their rates of fare and freight, unless protected by their charter." The justice further said: "When the legislature steps in

and prescribes a maximum charge, it operates upon this corporation the same as it does upon individuals engaged in similar business. It was within the power of the company to fix permanently this limit and make it a part of the charter, and if it was refused, to abstain from accepting the rate and establishing the contemplated business. If that had been done, the charter *might* have presented a contract against future legislative interference.

In Louisville, etc. Railroad Company vs. Railroad Commission, 19 Federal Rep., 679, it is said: "Rights of property, like social and conventional rights, are held subject to such reasonable limitations in regard to their enjoyment, as shall prevent them from being injurious to the rights of others, and to such reasonable restraints and regulations to be established *by law* as the legislature may from time to time ordain and establish. It is on this principle—applicable alike to all kinds of property—generally dominated the *Police Power* of the State, that the authority is founded for such control over individuals and over their property as is necessary to insure safety to all and to promote the public conveniences and welfare. And in the exercise of this reserved authority the legislature may require railroad corporations and persons operating railroads in the State to observe precautionary measures against accident, forbid unjust discrimination and extortionate charges, and where there is no valid contract to the contrary, prescribe reasonable maximum charges for the services to be performed by them.

In B. & O. R. R. Co. vs. Maryland, 21 Wall., 456 (678), the Supreme Court said: "This unlimited right of the State to charge, or to authorize others to charge, toll, freight or fare, for transportation on its road, canals and railroads arises from the simple fact that they are its own works, or constructed under its authority. It gives them being. It has a right to exact compensation for their use. It has a discretion as to the amount of

that compensation. That discretion is a legislative and *sovereign* discretion, and in its very nature, is unrestricted and uncontrolled. The security of the public against any abuse of this discretion resides in the responsibility of those who for the time being are officially invested with it. In this respect it is like all other legislative power when not controlled by constitutional provisions; and the courts cannot presume that it will be exercised detrimentally."

Stein vs. Farmers' Loan & Trust Co., 116 U. S., 307, was a suit brought by the Farmers' Loan & Trust Company to enjoin the Railroad Commission of Mississippi from enforcing against the Mobile & Ohio Railroad Company the provisions of statutes of that State providing for the regulation of freight and passenger rates on railroads, passed in 1884. In 1848 on the 3rd day of February, the legislature of Alabama passed an act incorporating the Mobile & Ohio Railroad Company. By the 12th section of the charter it was enacted, "that it shall be lawful for the company hereby incorporated from time to time to fix, regulate and receive toll and charges by them to be received for the transportation of persons or property." On the *17th day of February, 1848*, the legislature of Mississippi passed an act to incorporate the Mobile & Ohio Railroad Company. This act recited the incorporation of the company in Alabama, setting out that act of incorporation in full; and also recited that Mississippi was desirous to aid in accomplishing the object of said act. It was provided in said act in Section 1, that "the railroad company when organized shall be granted the same rights, powers and privileges as are granted to it within the State of Alabama." Like acts were passed by the legislature of Tennessee and Kentucky. Each of the last-named acts provided, that the railroad company shall be entitled to all the privileges, rights and immunities granted and prescribed by the State of Alabama. From this it was claimed that the State granted to the

company for the full term of its corporate existence the right of managing its own affairs and regulating its charges for the transportation of persons and property, free of all legislative control. The Court said: "It is now settle in this court, that the State has power to limit the amount of charges by railroad companies for the transportation of persons and property within its own jurisdiction, unless restrained by some contract in the charter. * * * This power of regulation is a power of government *continuing in its nature*, and *if it can be bargained away at all*, it can only be by words of *positive grant* or something which is in law *equivalent*. If there is a reasonable doubt, *it must be resolved in favor of the existence of the power*."

New York & New England Railroad Co. vs. The Town of Bristol, 151 U. S., 556 (269), was error to the Supreme Court of the State of Connecticut, to review a judgment of that court affirming the order of the Railroad Commissioners that a graded crossing in the Town of Bristol should be removed, and directing alterations and changes. It was contended on the part of the company, amongst other things, that the action of the Railroad Commissioners was taking property without just compensation and without due process of law. Mr. Chief Justice Fuller, in delivering the opinion of the Court, said: "It is likewise thoroughly established in this Court, that the inhibitions of the Constitution of the United States upon the impairment of the obligations of contract or the deprivation of property without due process, or of the equal protection of the laws by the states, are not violated by the *legitimate* exercise of legislative power in securing the public safety, health and morals. The governmental power of self-protection *cannot be contracted away*. Nor can the exercise of rights granted, nor the use of property, be withdrawn from the implied liability to government regulation in particulars essential to the preservation of the community from injury."

In Boston Beer Co. vs. Mass., 97 U. S., 25 (988), Mr. Justice Bradley said: "Whatever differences of opinion may exist as to the extent and boundaries of the *Police Power* * * * the legislature cannot by any contracts divest itself of the power to provide for these objects."

In Northwestern Fertilizing Co. vs. Village of Hyde Park, 97 U. S., 659 (1036), the company was incorporated by an act of the legislature approved in 1867. The act declared that the corporation should have continued succession and existence for the term of fifty years. The 4th section provided, that "The corporation is hereby authorized and empowered to establish and maintain chemical and other works at the place *designated herein.*" Section 5 provided that the works should be established at any point south of the dividing line between certain townships. The capital stock of the company was Two Hundred Fifty Thousand Dollars, all of which had been paid up. The works were in existence and operation before the village was incorporated. The Common Council adopted an ordinance prohibiting any person from carrying on any offensive or unwholesome business within the limits of the village, nor within one mile of those limits. The Fertilizing Company was convicted of violation of this ordinance, and the bill in this case was filed against the village to prevent any further prosecution, the company claiming that it was protected by its charter from the enforcement of the ordinance against it, and that its charter was a contract within the meaning of the contract clause of the Constitution of the United States. The Court said: "The rule of construction in this class of cases is, that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved aversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is

fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this Court. * * * The charter was a sufficient license until revoked, but we cannot regard it as a contract guaranteeing in the locality originally selected an exemption for fifty years from the exercise of the Police Power of the state however serious the nuisance might be in effect by reason of the growth of the population around it. The owners had no such exemption when they were incorporated, and we think the charter did not give it to them."

Budd vs. State of New York, 143 U. S. 577 (247). Budd was convicted for a violation of the New York law of 1888, regulating the fees and charges for elevating grain by means of stationary elevators. The judgment was affirmed by the Court of Appeals, and the case removed to the Supreme Court of the United States. The Legislature in 1888 fixed a maximum charge for elevating, receiving and discharging grain, and imposed penalties for the violation of the act. It was claimed by Budd that the statute was unconstitutional, because it deprived the citizen of the property without due process of law. The Court reviewed the numerous cases, both in the State Court and United States Court, where the Police Power of the state had been exercised in controlling the rates of transportation, etc., and re-affirms the doctrine of Munn vs. Illinois, and emphasizes the doctrine, that where a business is charged with a public interest the Police Power of regulation exists. It will be remembered, that in Covington & Louisville Turnpike Road Co. vs. Sanford, supra, it was held, that the authority of the General Assembly had by statute to regulate the tolls of the plaintiff in error, arose from its general power to regulate the affairs of a corporation which came into existence under its authority and which owned and controlled a highway established for the public use. That it is of the highest importance that such control should remain with the

state, and it should not be implied that the legislative department intended to surrender it.

In Southern Pac. Co. vs. Board of Railroad Com'rs, 78 Fed. 230-275, a case heard before Mr. Justice McKenna, then Circuit Judge, the contention was as to the reasonableness of rates fixed by the railroad commissioners of California. In his opinion at page 257 he said:

"Munn vs. Illinois was a case concerning the reduction of warehouse rates,—not so indisputably a public interest as railroads. It established two propositions: (1) That of the power of the state to regulate property devoted to a public use. (2) That the exercise of this power to settle rates of charge was a legislative prerogative, not a judicial one; that is, there was no review of them by the judiciary. * * * * The first proposition, as to the power of the state, has not been overruled. The second proposition, as to its right of exercise without judicial review, has been overruled, and the relations of common carriers and the state established in excellent equipoise." But that part of the second proposition; namely, that the exercise of the power to settle rates of charge, was a legislative prerogative, remains unchanged.

The counsel for the railroad company in that case conceded the power to regulate, but very guardedly defined its limits; and the judge said further:

"The right—abstract right—of the state, therefore, to reduce rates, seems to be a necessity. Whether it should in any case, be exercised or not, is another question. Does the right exist? That I think it does, I may have sufficiently indicated in considering the contentions of respondents, and it is only necessary to give my views more definiteness.

In L. S. & M. S. Railway vs. Smith, decided April 17th, 1899, 19 Supreme Court Reporter, 565, the Court in holding the act of the Michigan Legislature, requiring the company

to sell one thousand mile tickets at specified rates less than the regular rate fixed by law, unconstitutional because such legislation was an unjust discrimination, affirms, however, the doctrine contended for here. It said:

"True it is that the railroad company exercises a public franchise and that its occupation is of a public nature, and the public therefore has a certain interest in, and rights connected with, the property, as was held in Munn vs. Illinois, 94 U. S. 125, and the other kindred cases. The Legislature has the power to secure to the public the services of the corporation for reasonable compensation so that the public shall be exempted from unreasonable exactions, and it has also the authority to pass such laws as shall tend to secure the safety, convenience, comfort, and health of its patrons and of the public with regard to the railroad. But in all this we find it neither necessary nor appropriate, in order that the Legislature may exercise its full right over these corporations, to make such a regulation as this, which discriminates against it and in favor of certain individuals, without any reasonable basis therefor, and which is not the fixing of maximum rates or the exercise of any such power."

"There is not the exercise of the acknowledged power to legislate so as to prevent extortion or unreasonable or illegal exactions. * * * In holding this legislation a violation of that part of the constitution of the United States which forbids the taking of property without due process of law, and requires the equal protection of the laws, we are not, as we have stated, thereby interfering with the power of the Legislature over railroads as corporations or common carriers to so legislate as to fix maximum rates, to prevent extortion or undue charges, and to promote the safety, health, convenience or proper protection of the public. We say this particular piece of legislation does not partake of the character of legis-

lation fairly or reasonably necessary to attain any of those objects, and that it does violate the federal constitution, as above stated.

IV.

THE POLICE POWER CANNOT BE DELEGATED OR BARGAINED AWAY, NOR CAN THE CORPORATION BY ANY CONTRACT HAMPER ITSELF IN THE EXERCISE OF IT.

In Birdsall vs. Clark, 73 N. Y. 73, the plaintiff was the owner of certain premises in the City of Bingham. The Common Council passed a resolution directing the setting of curbstones, and authorized the superintendent of streets, when the owner neglected to do the work, "to cause same to be done." Mr. Chief Justice Church said, "It is a well settled principle, that public powers or trusts devolved by law or charter upon the council or governing body to be exercised by it when and in such manner as it shall judge best, cannot be delegated to others. If discretion and judgment are to be exercised, either as to time or manner, the body or officer entrusted with the duty must exercise it, and cannot delegate it to any other officer or person."

In Toledo, Wabash & Western Ry. vs. City of Jacksonville, 67 Ill. 37 (16 Am. Rep. 611), the City of Jacksonville adopted an ordinance which required the railroad company to keep a flagman at a street crossing; and suit was brought to recover a penalty imposed for failure to comply therewith. The Court said: "The right to pass ordinances is claimed under the police power of the municipality. Waiving the question of the power of the city to pass the ordinance without being expressly authorized by the General Assembly, we shall treat the case

as though the city had the right by the grants in its charter to the exercise of the power in the regulation of domestic affairs that the State could do for the general welfare. There can be no question that railway corporations are subject to police regulations as well as private persons. The General Assembly, when the public exigencies require it, has power to regulate corporations in their franchises so as to provide for the public safety. The exercise of this right in no manner interferes with or impairs the power conferred by their act of incorporation." Citing the G. & C. U. R. R. vs. Loomis, 13, Ill. 588; Thorpe vs. Rutland, 37 Vt. 140. * * * "This power is inherent in the city, and it cannot part irrevocably with its control over that which is for the health and safety of society. In Thorpe vs. Rutland R. R. Co., 37 Vt. 140, the Court said: 'We think the power of the Legislature to control existing railways in this respect may be found in the general control over the police of the country which resides in the law-making power in all free states, and which is, by the fifth Article of the Bill of Rights of this State expressly declared to reside perpetually and inalienably in the Legislature, which is perhaps no more than the announcing of the general principle applicable to all free states, and which cannot therefore be violated so as to deprive the Legislature of the power *even by express grant* to any mere public or private corporation.

In Laurel Fork & Sand Hill Railroad Co. vs. West Virginia Transportation Co., 25 W. Va. 324, the plaintiff company was incorporated by an act of the Legislature of West Virginia, passed in 1866. The eighth section of the charter conferred upon the railroad company the right to charge for transportation of persons or produce and other duties, such charges or rates as may be deemed by the plaintiff just, provided that the charges for transporting oil shall in no case exceed the sum of seventy-five cents per barrel.

In 1873 the Legislature of West Virginia passed an Act to establish a reasonable maximum rate of charges, which applied to all railroads within the State, but the maximum rate was fixed at a sum larger than that specified in the eighth section of plaintiff's charter.

The sole question involved in the case, as stated by Mr. Justice Green, the writer of the opinion, was, Did the plaintiff below, the Laurel Fork & Sand Hill Railroad Company, have a right at all times to charge seventy-five cents per barrel for the transportation of oil over the whole length of their road, as authorized by the 8th section of chapter 113 of the Acts of 1866, that act being the original charter of the company, or did the right to make so large a charge for transportation cease after April 1, 1874, when the act of 1872-3 went into effect?

The Court held:

1. Railroad companies are common carriers engaged in a public employment affecting the public interest, and are subject to legislative control as to their rates of fare and freight, just as any natural person, who is a common carrier, is subject to such legislative control. (p. 342.)

2. Railroad corporations, which devote their property to a use, in which the public has a direct interest, in effect grant to the public an interest in such use, and must to the extent of that interest submit to be controlled by that public for the common good, as long as they maintain the use; but they may withdraw the grant by discontinuing the use. (p. 340).

3. There is a marked difference between such corporations as those spoken of in the last point, and purely private corporations. The former may be called quasi public corporations; and the legislature of the State has over the employment of their property so devoted to a use, in which the public has an interest, a control, which it does not have over the employment of the property of a purely private corporation. The legislature

can generally exercise no control, which is forbidden by the charter, of a purely private corporation (p. 341).

4. Though a railroad corporation by its charter is given "the power to contract in reference to its business the same as private individuals," or is authorized "to demand and receive such sum or sums of money for the transportation of persons and property and for the storage of property, as it deems reasonable," or though it is authorized to "carry freight and passengers charging reasonable terms" or though by its charter it is authorized to charge a certain fixed rate, which is declared by its charter to be irreducible by the legislature, and though no right to appeal, alter or amend the charter is reserved to the legislature in the act granting such charter, still the legislature has a right subsequently to establish by a general act a maximum rate of charges for the transportation of passengers and freight, and to make it applicable to railroad companies, who were, when the act was passed, operating their railroads under such previously granted charters. (p. 342.)

5. Irrevocable grants of franchises to corporations, which impair the supreme authority of the State to make laws for the right government of the State, must be regarded as mere licenses and not as contracts, which bind future legislatures; for no legislature can give away or sell the discretion of subsequent legislatures in respect to matters, the government of which from the very nature of things must vary in varying circumstances. (p. 342.)

6. The right to regulate and fix at their pleasure the charges of railroad companies for transportation of freight and passengers is one of the powers of the State inherent in every sovereignty, to be exercised by the legislature from time to time at its pleasure, and therefore any legislature cannot by a charter granted to a railroad company, though it be for a valuable consideration, confer on such railroad company a right to charge

certain fixed rates for the transportation of freight and passengers, and stipulate that this rate of charge shall not be changed by future legislatures. If that be done, it will not be regarded as a contract but in legal effect as nothing more than a license to enjoy this privilege conferred on the corporation for the time subject to future legislative or constitutional control. (p. 364.)

7. If in a special act of the legislature of this State chartering a company and conferring on it specified privileges exceeding those granted to other like corporations by the general law of the State there be reserved a right to amend this act by a future legislature, and the legislature subsequently passes a general act applicable to all corporations of this character, whereby the specified privilege, while not withdrawn, is so modified as to render it far less valuable to the corporation, which had been chartered by this special act, this cannot be regarded as an exercise by the legislature of the reserved right to amend an act, as it cannot properly be called an amendment of this special act; for by our Constitution, Article 6, Section 30, it is provided, that "no law shall be amended by reference to its title only; but the section amended shall be inserted at large in the new act." But such general act is not necessarily inoperative on such corporation, as it may or may not be subjected to such law; this depending upon whether the legislature has the constitutional power so to control the corporation in this respect. (p. 371.)

8. Chapter 227 of the Acts of 1872-3, passed December 27, 1873, entitled "an act to establish a reasonable maximum rate of charges for the transportation of passengers and freight, and to prevent unjust discrimination and extortion in the rates to be charged by different railroads in this State for the transportation of passengers and freight on said railroads" is applicable to all railroads in this State, whether their charters were

granted before or since the passage of this act; and it is binding on all railroad companies doing business in this State *without regard to any provisions, which may have been inserted in their charters.* The legislature had a constitutional right to pass this act; and no previous legislature had a right to so restrain or limit this legislature as to take from it the right to fix the maximum rates of charges of all railroads in the State, as it pleased. And any provisions in the charter of a railroad company purporting to restrain the legislature in this respect cannot be regarded as a contract, but must be regarded as a mere license revocable at the pleasure of the legislature. (p. 373.)

Judge Dillon, in Section 97, Municipal Corporations, 4th Ed., lays down the rule:

"Powers are conferred upon municipal corporations for public purposes and as their legislative powers cannot, as we have just seen, been delegated, so they cannot without legislative authority, express or implied, be bargained or bartered away. Such corporations may make authorized contracts, but they have no power as a party to make contracts or pass by-laws which shall cede away, control or embarrass their legislative governmental powers, or which shall disable them from performing their public duties.

In Milhau vs. Sharp, 27 N. Y., 611, it was held that the corporation authorities of the City of New York had no power to confer upon individuals by contract for an indefinite period a franchise for constructing and operating a railroad in the public streets. Judge Selden said:

"If that resolution should be sustained no power would remain in the corporation to remove the railway after its construction if it should prove to be a nuisance, *or reduce the rate of fare*, if it should be found unreasonably high or to compel the introduction of any improved conveyance, if at any future time such methods should be invented, without the consent of

the defendants or their successors, and the powers of the corporation over the streets in many other respects would be abridged. These powers were given to the corporation as a trust to be held and exercised for the benefit of the public from time to time as occasion might require, and they could neither be delegated to others, nor effectually abridged by any act of the corporation authorities."

Citing People vs. Kerr, 27 N. Y., 788; Presbyterian Church vs. Mayor, 5 Cowan, 538; Coates vs. Mayor, 7 Cowan, 585; Gossler vs. Corporation of Georgetown, 6 Wheat., 593. * * * The resolution is forever void for the reason that it purports to create the franchise which the Common Council had no power to create."

In Goszler vs. Corporation of Georgetown, 6 Wheat., 593, the corporation of Georgetown was granted full power and authority to make such by-laws and ordinances for the gradation and leveling of the streets as they may deem necessary for the benefit thereof. In pursuance of this authority an ordinance was passed providing for the leveling and gradation of certain streets, and that when made shall be forever thereafter considered as the true gradation of the streets and to be binding on the corporation and all other persons. Subsequently another ordinance changed the grade of a certain street, and the property owners sought to enjoin the cutting down of the street.

The court held that the power given was a continued power, and that the corporation might, from time to time, alter the gradation so made; Mr. Chief Justice Marshall saying: "We rather think that the legislature cannot abridge its own legislative power."

Richmond Gas Light Co. vs. Town of Richmond, 59 N. Y., 238, the legislature conferred power on the town of Middletown to be caused to be lighted with gas any and all streets of

the town whenever they deemed the same necessary. Under this authority the town entered into a contract which, amongst other things provided for the furnishing of gas by the plaintiff for the lighting of certain streets for the term of five years. The inquiry was whether the contract was valid for the five years. The Court said:

"The defendant was a municipal corporation created by law for certain governmental purposes, authorized to exercise such powers only as were conferred upon it by law. Prior to the passage of the act of 1865, it had no power to cause any of the streets of the town to be lighted with gas, or in any other way. By that act such power was conferred upon the defendant. For what term? If the board of town auditors could deprive the legislature of this power for five years, by entering into a contract with the plaintiff for that time, it might for one hundred years, by contracting for that period. I think it entirely clear that no such power was conferred by the act upon the town auditors."

In People's Railway Co. vs. Memphis Railway Co., 10 Wall., 38 (844). Mr. Justice Clifford held that municipal authorities of a city cannot grant to an association the power to construct and maintain for a term of years, a railroad in one of the streets of a municipality for the transportation of passengers for private gain, saying: "Special powers are given to such corporations to lay out, open and repair streets as a trust to be held and exercised for the benefit of the public from time to time, as occasion may require; and the general rule is that those powers cannot be delegated to others, nor be effectually abridged by any act of the municipal corporation without the express authority of the legislature."

See also numerous authorities cited by Judge Dillon in note to Section 97.

In Gale vs. The Village of Kalamazoo, 23 Mich., 344. Gale brought suit against the village of Kalamazoo for the breach of

a contract in refusing to exercise the legislative powers of the village to carry out an agreement. Gale and the village had entered into a written contract, in and by which Gale obligated himself to erect on certain lands in Kalamazoo a market house, and agreed upon the completion of the same to place it in the care and under the control of the village authorities for the term of ten years, the village agreeing to control and rent the stalls from year to year for such sums of money and to such persons as might be agreed upon between Gale and the President and Trustees of the Village, the rent to be paid to Gale as the same was received from the occupants of the stalls. Gale was to keep the market house in good repair at his own cost during the continuance of the contract.

In consideration of Gale's agreement, the village bound and obligated itself to have the market house attended to and supervised by a competent manager, and it further agreed that during a continuance of the contract there should be no other public market house in the village, provided Gale's market house proved large enough to accommodate the public. Mr. Justice Cooley delivered the opinion of the Court, and amongst other things he said: "If a municipal corporation can preclude itself in this manner from establishing markets wherever they may be thought desirable, or from abolishing them when found undesirable, it must have the right also to agree that it will not open streets, or grade or pave such as are opened, or introduce water for the supply of the citizens, except from some specified source, or buy fire engines of any other than some stipulated kind, or contract for any public work except with persons named; and if it might do these things it is easy to perceive that it might not be long before the incorporation itself, instead of being a convenience to its citizens, would have been used in various ways to compel them to submit to innumerable inconveniences, and would itself constitute a public nuisance of the most serious and troublesome description.

"Individual citizens, looking only to the furtherance of their private interests, might, in various directions, engage it in permanent contracts, which, while ostensibly for the public benefit, should impose obligations precluding further improvements and depriving the town prospectively of those advantages and conveniences which the municipality was created to supply, and without which it is worthless. For, if the village might bind itself to one market house, for ten years, it might do so for all time to come; and if it might agree that conveniences and improvements of one class might be confined by contract to one quarter of the town, a reckless or improvident board might agree with a greedy or unscrupulous proprietor of town lots, that all improvements of every description should be so located or made as to conduce to his benefit, irrespective of the general good.

It will not do to say of such a contract that it must be assumed to have been reasonable in view of the actual condition and wants of the village, and of its probable growth and future needs. What would be thought proper for the village this year, might be found worse than useless the next, and no official prescience could determine with absolute or even tolerable certainty what changes a few years might work. Indeed, it is impossible to predicate reasonableness of any contract by which the governing authority abdicates any of its legislative powers, and precludes itself from meeting in the proper way the emergencies that may arise. These powers are conferred in order to be exercised again and again, as may be found needful or politic, and those who hold them in trust to-day are vested with no discretion to circumscribe their limits or diminish their efficiency, but must transmit them unimpaired to their successors. This is one of the fundamental maxims of government, and it is impossible that free government with restrictions for the protection of individuals or municipal rights could long exist without recognition.

But there is at least one feature of the contract which would invalidate it, even if we were to be confined to a consideration of existing facts, and were at liberty to assume that the circumstances bearing on its reasonableness would continue unchanged for the whole period of ten years. Not only was the marketing to be confined to one locality, but the plaintiff was to have an unlimited right to control the occupation of the market house through the power given him to determine the rents to be paid by lessees. This vested in him a practical monopoly of the public market; and though it is possible that he might exercise his rights impartially as between dealers, and with an eye to the public good, we cannot lose sight of the fact so well stated in the old case of monopolies, that "the end of all these monopolies is for the private gain" of those who hold them.—Darcy vs. Allen, 11 Rep., 84; Broom Const. L., 738. They are founded in destruction of trade, and cannot be tolerated for a moment."

In Pontiac vs. Carter, 32 Mich., 164, the same learned justice again said: "A city cannot even by contract itself of any of its legislative powers, which was conferred upon it to be exercised again and again as long and as often as occasion shall require."

In the matter of opening First Street, 66 Mich., 42, the City Council had agreed with the Grand Rapids & Ind. R. R., that in consideration of the construction and maintenance of a passenger house between Bridge and First street, that First street should not be continued across the line of said railroad. The city afterwards sought to open the street, and the railroad company contended that it was in violation of its contract. The Court said: "The laying out and opening of streets by the Common Council of a city is the exercise of its legislative functions, and any contract made by a city with an individual or corporation, by which it agrees that it will not in the future open or extend a street in any particular place or part of the city, is an abnegation of its legislative powers, unauthorized by its char-

ter, and may be alike be destructive of the convenience and prosperity of the municipality. The claimed contract in this case is of this character, and void, and furnishes no basis for any liability of any kind on the part of the city to the defendant in this case. (Citing authorities.) * * * The powers of a municipal corporation in respect to improving and controlling its streets are held in trust for the public benefit, and cannot be surrendered by contract to private persons, or to a corporation, by resolution of the Common Council, or in any other manner. If this could be done there is no reason why the Common Council of any year may not, by contract, preclude the city for all future time from opening, widening or extending any of its streets, or laying new streets, no matter how great the public necessity may be therefor. * * *

Petz vs. City of Detroit, 95 Mich., 169, was a bill by Petz to restrain the City of Detroit from interfering with the complainant's occupancy in the Central Market. By ordinance it was made the duty of the controller in each year to lease the stalls and stands which might be applied for, for a term of one year. In 1885 the complainants entered into written leases with the City of Detroit, as provided for in the ordinance; but thereafter no lease was made, the complainants however continuing to occupy, and claiming thereby to be tenants from year to year. The Court said: "The authority to establish and regulate markets falls within the Police Power of the states, and the right to exercise such authority may be conferred upon municipal corporations. The Police Power cannot be abridged, granted or bargained away, or impaired by contract. Complainants' tenancy, whether from year to year or from month to month, was subject to the exercise by the Common Council of the power of removal vested in that body."

Common Council cannot delegate its powers to R. R. Co.

In Mayor of Knoxville vs. Africa, 77 Fed. Rep., 501, a decision of the Court of Appeals of the Sixth Circuit in constru-

ing an ordinance of the City of Knoxville, which in all respects is similar to the ordinance of November 24th, 1862, involved here, in respect to the claim asserted that the ordinance conferred upon the grantees named therein the exclusive right to the use of all streets in the City of Knoxville for the purpose of operating a street railroad irrespective of whether such streets were specifically designated in the ordinance or not. Judge Lurton said:

"The clear purpose of this ordinance was to enable the grantee to elect from time to time what streets it would occupy, and what new lines, or extensions of old ones, its interests as a private corporation would justify. To delegate this power to a street railroad company is wholly inadmissable, violates every principle of public policy, and has no sanction in law. The provision of the statute, providing that "no one of the streets of said city shall be used by said company * * * until the consent of the city authorities has been first obtained and an ordinance shall have been passed prescribing the terms on which the same may be done," is a clear implication that the city authorities shall know what streets the proposed railroad is to occupy, and intelligently determine whether the public interests will thereby be subserved."

And in holding that this power of designation of the streets in the Common Council of the city and could not be delegated to the railroad company, he cites the case of State of New Jersey vs. Mayor, 30 Atl., 531, where a city ordinance empowered a street railroad company to construct any and all necessary curves, sidings, crossovers, and switches that may be required for the proper, safe, and economical operation of the railway," was held void as delegating a discretion to the railroad company which the municipal government was itself bound to exercise.

And also Railway Co. vs. Jones, 34 Fed., 579, by Judge Caldwell, where a grant to a street railway company to occupy certain named streets, "and all other streets, within the present and

future corporate limits of the City of Pine Bluff, as the parties of the second part think the public necessities require," which ordinance was held invalid, the court holding that "The power and duty of determining when and on what streets the public conveniences requires street railroads is devolved by law on the City Council, and that body cannot refuse to discharge this duty, or devolve it on a street car company, whose action would be controlled by its own, rather than the public interest."

The principle of the above cases applies in the case at bar to the contention of complainant's counsel that the street railroad company, by the ordinance under consideration, have been given the power and authority to fix and determine any rate the street railway company may determine upon, not considering the maximum rate fixed in the ordinance. This is an attempt at delegation by the Common Council of Detroit to the railroad company of fixing and determining a rate within the limit without respect to the reasonableness of such rate, but solely with a view of meeting the supposed requirements, necessities or greed of the railway company.

In Wabash Railroad Co. vs. Defiance, 167 U. S., 88, this Court affirmed the ruling of the Supreme Court of Connecticut, saying that:

"The governmental power of self-protection cannot be contracted away, nor can the exercise of rights granted nor the use of property, be withdrawn from the implied liability to government regulation in particulars essential to the preservation of the community from injury." Citing cases.

"While municipalities, when authorized so to do, doubtless have the power to make certain contracts with respect to the use of their streets, which are obligatory upon them," citing cases; "the general rule to be extracted from the authorities is that the legislative power vested in municipal bodies is something which cannot be bartered away in such a manner as to disable them from the performance of their public functions. These bodies

exercise only such powers as are delegated to them by the sovereign legislative body of the state. Such powers, however, are personal to the municipalities themselves, and being conferred for the benefit of the whole people, in the absence of authority to that effect, cannot be bestowed by contract or otherwise upon individuals or corporations in such a manner as to be beyond revocation."

V.

THE REGULATION OF FARES IN THE ORDINANCES IN QUESTION MAY BE SUPPORTED BY THE RESERVE POWER OF ALTERATION, AMENDMENT OR REPEAL, CONTAINED IN THE CONSTITUTION AND STATUTES OF MICHIGAN.

The Constitution of the State of Michigan, Art. 15, Sec. 1, provides:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

My contention is that the regulation of the rates of fare or toll upon the street railway is a governmental function, delegated by the legislature of the State of Michigan to the municipalities, and no matter in what form such delegation or power may be exercised, whether by ordinance or an assumed contract, it is nevertheless a law, subject to alteration, amendment or repeal. It has not been the policy of the State of Michigan since the adoption of the present Constitution to permit irrevocable legislation. The State cannot do it itself, and if it cannot, surely one of its creatures, like a city, cannot be permitted to do that which its creator is prohibited from doing.

Few, if any, charters are now granted to corporations either by special grant or under general laws without a reservation of the right to amend or repeal them.

As was said by Mr. Justice Miller in Greenwood vs. Union Freight Railroad Company, 105 U. S., 13 (961):

"As early as 1806, in the case of Wales vs. Stetson, 2 Mass., 146, the Supreme Court of that State made the declaration, 'That the rights legally vested in all corporations cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved to the legislature in the act of incorporation.' In the case of Dartmouth College vs. Woodward, 4 Wheaton, 518, decided in 1819, this court announced principles on the subject that the charters of private corporations were entitled to claim, under the clause of the Federal Constitution against impairing the obligation of contracts, which, though received at the time with some dissatisfaction, have never been overruled in this court. The opinion in that case carried the protection of the constitutional provision somewhat in advance of what had been decided in Fletcher vs. Peck, 6 Cranch, 87, and the preceding cases, and held that it applied not only to contracts between individuals, and to grants of property made by the State to individuals or to corporations, but that the rights and franchises conferred upon *private as distinguished from public corporations* by the legislative acts under which their existence was authorized, and the right to exercise the functions conferred upon them by the statute, were, when accepted by the corporators, contracts which the State could not impair.

It became obvious at once that many acts of incorporation which had been passed as laws of a public character, partaking in no general sense of a bargain between the states and the corporations which they created, but which yet conferred private rights, were no longer subject to amendment, alteration or repeal, except by consent of the corporate body, and that the general control which the legislatures creating such bodies had previously supposed they had the right to exercise, no longer existed. It was, no doubt, with a view to suggest a method by which the State Legislatures could retain in a large measure

this important power, without violating the provisions of the Federal Constitution, that Mr. Justice Story, in his concurring opinion in the Dartmouth College case, suggested that when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligations. And he cites with approval the observations we have already quoted from the case of Stetson vs. Wales, 2 Mass., 146.

It would seem that the states were not slow to avail themselves of this suggestion, for while we have not time to examine their legislation for the result, we have in one of the cases cited to us as to the effect of a repeal, a case from McLaren vs. Pennington, 1 Paige, 102, in which the Legislature of New Jersey, when chartering a bank with a capital of $400,000 in 1824, declared by its 17th section that it should be lawful for the legislature at any time to alter, amend and repeal the same. And Kent, 2nd Com., 307, speaking of what is proper in such a clause, cites as an example a charter by the New York Legislature, of the date of February 25th, 1822. How long the Legislature of Massachusetts continued to rely on a special reservation of this power in each charter as it was granted, it is unnecessary to inquire, for in 1831, it enacted as a law of general application, that all charters of corporations thereafter granted should be subject to amendment, alteration and repeal at the pleasure of the legislature, and such has been the law ever since.

The history of the reservation clause in acts of incorporation supports our proposition, that whatever right, franchise or power in the corporation depends for its existence upon the granting clauses of the charter, is lost by its repeal."

The evident purpose of the reservation, in view of its history, was to eliminate as far as possible the elements of an inviolable contract from grants and franchises; but as the doctrine whose

results it aims to prevent has been criticised, and its scope and bearing were not at first appreciated, the reasoning upon the reserved power is likewise often obscure.

"The right to repeal or alter a charter may be reserved by the operation of a constitutional provision or statute, the general application in force at the time the corporation is created.

In Pennsylvania College Cases, 13 Wall., 213 (550), Jefferson College was incorporated in 1802; Washington College in 1806, and was located seven miles distant from Jefferson College in the same county. Experience showed, in the progress of events, that the interests of both institutions would be promoted in their union, and the Legislature of Pennsylvania, in 1865, passed an act to unite the two colleges and to erect the same into one corporation under the name of Washington and Jefferson College. Certain interested parties were dissatisfied with the new arrangement and several bills in equity were filed looking to the undoing of the legislature of 1865. The only question considered in the case was whether the act of 1865 impairs the obligation of the contract between the state and corporation of Jefferson College, as created by the original charter. In other words, whether it is repugnant to the 10th section of the Federal Constitution. By that charter it was declared that the trustees should be a body politic, to a perpetual succession, and that the constitution of the college "shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of the commonwealth."

Mr. Justice Clifford, delivering the opinion of the Court, said:

"Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as the grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no State shall pass any law impairing the ob

ligations of contracts. Dartmouth Coll. vs. Woodward, 4 Wheat., 700. Charters of private corporations are regarded as executed contracts between the government and the corporators, and the rule is well settled that the legislature cannot repeal, impair or alter such a charter against the consent or without the default of the corporation judicially ascertained or declared. Fletcher vs. Peck, 6 Cranch, 136; Terrett vs. Taylor, 9 Cranch, 51. Of course these remarks apply only to acts of incorporation which do not contain any reservations or provisions annexing conditions to the charter modifying and limiting the nature of the contract. Cases often arise where the legislature, in granting an act of incorporation for a private purpose, either make the duration of the charter conditional, or reserve to the state the power to alter, modify or repeal the same at pleasure. Where such a provision is incorporated in the charter, it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the constitution. Such a power also, that is, the power to alter, modify or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all Acts of incorporation, or to certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the Act of incorporation is one which falls within the reservation and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition nor any allusion to such a reservation. Dartmouth Coll. v. Woodward, 4 Wheat., 708; Gen. Hosp. v. Ins. Co., 4 Gray, 227; Suydam v. Moore, 8 Barb., 358; Ang. & Ames, Corp. (10th Ed.), Sec. 767, p. 787. Reservations in such a charter, it is admitted, may be made, and it is also conceded that where they exist the exercise of the power reserved by a subsequent legislature does not impair the obligations of the contract created by the original act of incorporation. Subsequent

legislation altering or modifying the provisions of such a charter, where there is no such reservations, is certainly unauthorized if it is prejudicial to the rights of the corporators, and was passed without their assent, but the converse of the proposition is also true, that if the new provisions altering and modifying the charter were passed with the assent of the corporation and they were duly accepted by a corporate vote as amendments to the original charter, they cannot be regarded as impairing the obligation of the contract created by the original charter. Mumma vs. Potomac Co., 8 Pet., 286; Dartmouth Coll. vs. Woodward, 4 Wheat., 712; Slee vs. Bloom, 19 Johns, 474; Riddle vs. Locks, 7 Mass., 185; McLaren vs. Pennington, 1 Paige Ch., 107; Lincoln & Ken. Bk. vs. Richardson, 1 Me., 79; Monongahela Nav. Co. vs. Coon, 6 Pa. St., 379; Com. vs. Cullen, 13 Pa. St., 133; Sprague vs. Ill. Riv. R. R. Co., 19 Ill., 174; Joy vs. Jackson Co., 11 Mich., 155.

Private charters, or such as are granted for the private benefit of the corporators, are held to be contracts because they are based for their consideration on the liabilities and duties which the corporators assume by accepting the terms therein specified, and the grant of the franchise on that account can no more be resumed by the legislature or its benefits diminished or impaired without the assent of the corporators than any other grant of property or legal estate, unless the right to do so is reserved in the act of incorporation or in some general law of the State which was in operation at the time the charter was granted. Cool. Cons. Lim., 279; Binghamton Bridge Case, 3 Wall., 51 (70 U. S., 181; Piqua Bank vs. Knoop, 16 How., 369; Vincennes Univ. vs. Indiana, 14 How., 268; Panter's Bk. vs. Sharp, 6 How., 301."

In Stone vs. Wisconsin, 94 U. S., 181 (102), the plaintiff in error was arrested and tried in the court below for alleged violation of a statute of the State in receiving more than the statutory rate of fare from a railroad passenger. The territory of

Wisconsin had granted a charter to a railroad company which was not accepted at the time the State was admitted into the Union. The charter provided that on the completion of said railroad it shall and may be lawful for the company to demand and receive such sum or sums of money for passengers and freight of persons and property as they shall, from time to time, think reasonable, and it was claimed that this gave the company the contract right to fix its own rates of fare and freight, subject only to a judicial determination as to whether they were reasonable.

The Constitution of Wisconsin provides that all laws for the creation of corporations may be altered or repealed by the Legislature at any time after its passage. Several months after the State was admitted the company accepted its charter. The Court held that the State Constitution having continued the act incorporating the company in force, it became thereafter a State statute for the incorporation of the company, and as such, subject to the reserve power of alteration and repeal.

In Atlantic & Gulf R'y Co. vs. State of Georgia, 98 U. S., 359 (1851), by the statutory Code of Georgia which came in force January 1, 1863, it was enacted that private corporations were subject to be changed, modified or destroyed at the will of the creator, except so far as the law forbids it; and in all cases of private charters thereafter granted, the State reserves the right to withdraw the franchise, unless such right is expressly negatived in the charter. Two railroad corporations created prior to 1863, each of which enjoyed by its charter a limited exemption from taxation, were consolidated by virtue of an Act of the Legislature passed on the 18th of April, 1863, which authorized a consolidation of their stocks, conferred upon the consolidated companies full corporate powers, and continued to it the franchises, privileges and immunities which the companies had held by their original charters. The Court held, first, That,

by the consolidation a new corporation was created and the original companies were dissolved.

2. That the new corporation became subject to the provision of the Code which reserved the right to the Legislature to withdraw its charter or to change, modify or destroy it.

3. That a subsequent legislative act, taxing the property of the corporation as other property in the State is taxed, was not prohibited by the provision of the Constitution of the United States which denies to a State the power of passing a law impairing the obligation of a contract.

Spring Valley Water Works vs. Schottler, 110 U. S., 347 (1733). Article 4, Sec. 31, of the Constitution of the State of California, adopted in 1849, is as follows:

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed."

In 1853 the Legislature passed an act providing for the formation of corporations for certain purposes, including corporations for the purpose of supplying cities, counties and towns with water. Under this act it was provided that such corporations should furnish such cities, etc., water for family use, at reasonable rates and without distinction of persons, and should furnish water for fire and other great necessities free of charge; that the rates to be charged for water should be determined by a board of commissioners, two selected by such city, two by the water company, and in case the four could not agree, they should chose a fifth person and a decision of the majority should determine the rates charged for one year and until new rates should be established. In 1878 the commission fixed a tariff of rates to go into effect on the first of January, 1878. In 1879 California adopted a new constitution which went into effect January 1, 1880. This new Constitution provided that the rates for the use of water should be fixed annually by the board

of supervisors. Under this provision the supervisors claimed the right and power to fix the rates to be charged by the Spring Valley Water Works for the use of water. The question involved in the case was whether water power companies in California formed before the adoption of the Constitution in 1879 have a right which the State is prohibited by the Constitution of the United States from impairing or taking away, to charge their customers such prices for water as may, from time to time, be fixed by a commission.

Mr. Chief Justice Waite said:

"The reservation of power to alter or repeal the charters of corporations was not new, for almost immediately after the judgment of this Court in the Dartmouth College Case, 4 Wheat., 518, the states, many of them, in granting charters acted on the suggestion of Mr. Justice Story in his concurring opinion, and inserted provisions by which such authority was expressly retained. * * * In California, the Constitution put this reservation into every charter and consequently this company was from the moment of its creation subject to the legislative power of alteration and, if deemed expedient, of absolute extinguishment as a corporate body. * * *

"The power to amend corporate charters is no doubt one that bad men may abuse, but when the amendments are within the scope of the power, the courts cannot interfere with the discretion of the legislatures that have been invested with authority to make them. * * * The provision for fixing rates cannot be separated from the remainder of the statute by calling it a contract. It was a condition attached to the franchises conferred on any corporation formed under the statute and indissolubly connected with the reserved power of alteration and repeal."

In Chesapeake & Ohio Railway Co. vs. Miller, 114 U. S., 176 (1121), the statutes of West Virginia exempted from taxation certain railroad companies which afterwards were consolidated

into the Chesapeake & Ohio, and it was held that such exemption was personal to the original corporation and did not pass to their successor; but the Court said:

"Were it otherwise, and if they were constrained to hold that the new corporation took all the rights and privileges of the old, still, all grants of corporate rights, powers, privileges, franchises and immunities are taken subject to existing laws, remaining unrepealed. At the time the plaintiff in error became a corporation the statute of West Virginia was in force and has never been repealed. It enacted amongst other things as follows:

"And the right is hereby reserved to the legislature to alter any charter or certificate of incorporation hereafter granted to a joint stock company, and to alter or repeal any law applicable to such company. * * * The rights of the plaintiff in error, as a corporation, are determined by the law in force when it came into being, although there is no ground on which it can be contended that there was any legislative contract in the Act of March 1, 1866.

In Tomlinson vs. Jessup, 82 U. S., 454 (204), there was a bill filed for an injunction against the collection of a tax. The question presented was whether an act passed to amend the charter of the Northeastern Railroad Company exempted the property of that company from such taxation. The company was incorporated in 1851, and at that time a general law of the State was in existence which enacted that the charter of every corporation subsequently granted should be subject to amendment, alteration or repeal by legislative authority, unless the act granting the charter or the renewal, amendment or modification, in express terms excepted it from the operation of that law. The Court said:

"The provisions of that law constituted the condition upon which every charter of a corporation subsequently granted was

held, and upon which every amendment or modification was made. They were as operative and as much a part of the charter and amendment, as if incorporated into them.

It is true that the charter of the company when accepted by the corporators constituted a contract between them and the State, and that the amendment, when accepted, formed a part of the contract from that date and was of the same obligatory character. And it may be equally true, as stated by counsel, that the exemption from taxation added greatly to the value of the stock of the company, and induced the plaintiff to purchase the shares held by him. But these considerations cannot be allowed any weight in determining the validity of the subsequent taxation. The power reserved to the State by the law of 1841, authorized any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original corporators, or subsequent stockholders, took their interest with knowledge of the existence of this power, and the possibility of its exercise at any time in the discretion of the legislature. The object of the reservation, and of similar reservations in other charters, is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise if the public interest should at any time require such interference. It is a provision intended to preserve to the State control over its contract with the corporators, which without that provision would be irrepealable and protected from any measures affecting its obligation."

Miller vs. People of the State of New York, 82 U. S., 478 (15 Wall., 98), was a suit in the nature of a quo warranto to try the title of the plaintiffs in error to the office of directors of the Rochestor and Genesee Valley River R. R. Co.

It was held that the power to alter, modify or repeal an act of incorporation, may be reserved to the State by a general law applicable to all acts of incorporation, in which case the power may be exercised whenever the charter was granted subse-

quently to the passage of the general law. Where such a provision is incorporated in the charter, it qualifies the grant, and the subsequent exercise of that reserved power is not an act within the prohibition of the Constitution. The reservation is equally valid and effectual if it exists in the Constitution of the State, or in a prior general law.

These principles were applied to an amendatory act authorizing a city to elect seven directors of a railroad company instead of four, as theretofore provided.

In Close vs. Greenwood Cemetery, 107 U. S., 466 (408), the Court said: "A power reserved to the legislature to alter, amend or repeal a charter, authorizes it to make any alteration or amendment of the charter granted subject to it which will not defeat or substantially impair the object of the grant of any rights vested under it which the legislature may deem necessary to secure either that object or any public rights."

In the Commissioners of Inland Fisheries vs. Water Power Co., 104 Mass., 446, in the exercise of such power by the United States, it was observed by the Chief Justice in delivering the opinion of the Court in the Sinking Fund Cases: "It is not only their right, but their duty, as sovereigns to see to it that the current stockholders do not in the administration of the affairs of the corporation appropriate to their own use that which in equity belongs to others." 99 U. S., 700 (496).

Sioux City St. Ry. Co. vs. City of Sioux City, 138 U. S., 98 (898). The Sioux City St. Railway Co. became a corporation on December 6, 1883, under a general act of the corporation laws of Iowa. On the 12th of December, 1883, the City of Sioux City by an ordinance conferred upon the company the right to locate, operate, construct and maintain street railways upon and along certain streets of the city, on the terms and conditions specified in such ordinance. Section 11 of the ordinance was as follows: "Whenever by resolution of the Common Council any street or part of street on which said track shall be

laid and operated shall be ordered paved or macadamized, either at the expense of the city or of the owners of abutting property, then the said proprietors of said railway shall pave or macadamize in the time and manner directed the space *between* the rails, and shall thereafter keep the space *between* the rails in good repair; and shall keep in good condition and repair the space between the tracks on all bridges that they may cross." The company accepted the ordinances. March 15th, 1884, the legislature of Iowa passed an act entitled, "An Act granting additional powers to certain cities of the first class with reference to the improvements of streets," etc. The sixth section of the act provided as follows: "All railway companies and street railway companies in cities of the first class as provided in Section 1 of this act, shall be required to pave or repave between the rails, *and one foot outside of their rails*, at their own expense and cost;" and providing further, that whenever any street should be ordered paved or repaved, that the space between the outside of their rails should be done at the same time, and of the same material. On the 11th of May, 1886, the City Council passed an ordinance providing therein that "whenever the City Council shall cause to be paved any street whereon any railway has or shall be located and laid down, they shall also order and provide by resolution that the company or persons owning the said street railway pave said street between the rails of said railway or street railway, and one foot each side the rails, at their own expense and cost; Provided, That the provisions in this section shall not in any manner be construed to affect any right accrued or existing in favor of said railway companies or street railway company under any franchise or license heretofore granted under any ordinance heretofore adopted by said City Council." Under this and subsequent ordinances the City Council ordered certain streets to be paved, and provided for assessing to the street railway company the cost of paving the space between the rails and one foot outside thereof. The company objected

to this assessment, alleging that it was expressly provided that the company should only be required to pave so much of the streets wherein the track was constructed as should be *between the rails of said track*. The Court said that under Section 1090 of the Iowa Code the legislature had the power not only to repeal and amend the articles of incorporation of the company, but could impose any condition upon the enjoyment of its franchise which the General Assembly might deem necessary for the public good. The reservation of this power was a condition of the grant. The City Council could make no arrangement with the company which would not be subject under that section to the superior power of the General Assembly. "Moreover, the city derived from the State alone its power to grant a license to the company. The right to operate the railway in the streets is a franchise obtained through power given to the city by the State, but the State reserved the power to regulate such franchise and impose conditions on it. It reserved the power to determine the question of the exemption of the company from taxation, and to describe what burdens should be imposed upon it for the public good in the enjoyment of its franchise. Manifestly, such power of the State would exist, if the right to occupy the streets with tracks were granted to the company directly by an act of the legislature of the State; and the case is not changed by the fact that the franchise was granted by the city. There is nothing in the ordinance of the City Council which takes away the power of the State and the city to impose additional taxes on the property of the company, or which indicates an intent that no further or different tax should subsequently be imposed on its property. Delaware R. R. Tax Case, 85 U. S., 18 Wall., 200, 207 (21: 888, 895); Union Pass. R. Co. vs. Philadelphia, 101 U. S., 528, 536 (25: 912, 913); Com. vs. Easton Bank, 10 Pa., 451.

No question can arise as to the impairment of the obligation of a contract, when the company accepted all of its corporate

powers subject to the reserved power of the State to modify its charter and to impose additional burdens upon the enjoyment of its franchise. Under the act of March 15th, 1884, it was made a condition of the enjoyment of its franchise by the company, that when the city should determine that the streets should be paved, the company should bear a certain portion of the cost thereof; and any prior contract between the company and the city in regard to paving was subject to the provisions of Section 1090 of the Code. There was nothing in the ordinance of December 12th, 1883, which bound or could bind the city not to exercise its statutory authority to impose other conditions upon the exercise of the rights of the company.

Our conclusion, therefore, is that there was no contract between the company and the State or the city, the obligation of which was impaired by the laying of the tax in question."

In Gibbes vs. Consolidated Gas Co. of Baltimore, 130 U. S., 396 (979); after the incorporation of the two gas companies in the City of Baltimore, the Legislature of Maryland in 1882 passed an act among other things prohibiting the gas company from entering into any consolidation, combination, or contract with any other gas company whatever. Notwithstanding this provision, the two gas companies sought to consolidate; and the Court held such attempted consolidation illegal, basing its opinion upon the general power reserved to alter, amend or repeal, and saying, that the consent of the corporation was not required to the operation of such a provision as that embodied in the act of 1882.

The same doctrine is fully discussed by the Court in U. S. vs. U. P. R. R. Co., and Western Union Tel. Co., 160 U. S., page 1 (331); and the authorities upon the subject are there collated

Louisville Water Co. vs. Park, 143 U. S., 1 (55). In this case it is held, that where the law of the State exempts a corporation from taxation, and there is a previous law that the legisla-

e may alter or amend charters and laws, a subsequent statute,
ing the property of the corporation subject to taxation does
t impair the obligation of any contract which it had with the
ate by the law giving the exemption. The Water Company
s granted an exemption from taxation, and this exemption
s subsequently withdrawn; and the Court held that it was
mpetent for the legislature to withdraw such exemption. The
urt say: "By the reservation in the law of 1831, which is to
considered embodied in that act, the State retained the power
ter it in all particulars constituting the grant to the new
mpany formed under it of corporate rights, privileges and
munities. The existence of the corporation and its franchise
f immunities. The existence of the corporation and its fran-
se and immunities derived directly from the State were thus
t under its control."

Grand Rapids E. L. & P. Co. vs. Grand Rapids E. E. L. &
G Co., 33 Fed., 659. The City of Grand Rapids in 1880
ed an ordinance giving the Grand Rapids Electric Light &
wer Co authority to use *exclusively* for the term of fifteen
rs from the passage of this ordinance any or all streets, lanes,
es, etc., in the city; and expressly agreed therein, that "The
clusive rights and privileges hereby granted shall not be im-
ired or abridged by alteration or amendment." This ordin-
ce was duly accepted, and the company thereafter proceeded
onsiderable expense to locate works and to extend its works
order to supply the city with electric light. May 20th, 1887,
City of Grand Rapids passed an ordinance granting to the
fendant, the Grand Rapids Edison Electric Light & Fuel
Co., the right to use the streets of said city for the purpose
erecting supports, running wires on or cables, etc., in the dis-
bution of electric lights throughout the city. The defendant
epted this ordinance, which contained the same general pro-
ions as the ordinance of April 19th, 1880, except that it con-
red no exclusive rights or privileges; and was proceeding

with the erection of its wires when the complainant filed a bill in equity in the Circuit Court of the United States, claiming that its acceptance of the ordinance of April 19th, 1880, constituted a contract with the City of Grand Rapids which conferred upon it the exclusive right to use the streets for the purposes enumerated in said ordinance. Judge Jackson heard this case, and in the course of a very elaborate opinion he said at page 672: "Looking at the question of the legislative intent, from another standpoint, we find that it is not the policy of the State of Michigan to grant irrepealable franchises and privileges to private corporations. Articles 15, Section 1, of the State Constitution, provides that 'Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. *All laws passed pursuant to this section may be amended, altered or repealed.*' Now, by the ordinance of 1880, if valid, the complainant, a corporation organized under the laws of the State, has secured not only the exclusive franchise belonging to the State, but an *irrepealable privilege*, such as the legislature could not have conferred. Is it to be presumed that the legislature under its constitutional authority '*to confer upon incorporated cities such powers of a local, legislative and administrative character as they may deem proper*,' intended to invest the Common Council of Grand Rapids with the power to grant irrepealable franchises in or over the streets of that city, and thereby confer upon the grantee privileges or franchises not subject to alteration, amendment or repeal—rights which the legislature could not itself have directly conferred? If such a presumption is proper, the conclusion is reached, that the agencies or creatures of the State may in the exercise of derivative and delegated power do what the legislature could not. This would violate the well settled rule, that the legislature cannot do indirectly through the local government what the people by their constitution have restricted it in doing directly." Dillon Mun. Corp., 2nd Ed., Sec. 262.

In Section 317, Dillon's Municipal Corporations, 4th Ed.: "Since all the powers of the corporation are derived from the law and its charter, it is evident that no ordinance or by-law of the corporation can enlarge, diminish or vary its powers."

In the recent case of Attorney General vs. Pingree et al., decided July 5th, 1899, 120 Mich., 550, the Supreme Court of Michigan, in discussing the recent Act of the Legislature providing for the appointment of a commission and the purchase of the railway system of the City of Detroit, and having reference to the Michigan constitutional provision, which prohibits the State from engaging in any works of internal improvement —Section 9, Article 14, said: "To say the system of railroads as it existed in 1850 constituted internal improvements within the meaning of the Constitution, and that the system of roads existing in Detroit which are to be taken over by the commission, and the lines leading thereto, with which said commission is allowed to make agreements for deeds and leases and in relation to the exchange of tickets and transfers, is not a system of internal improvements within the meaning of the Constitution, is to deny the words in common use their ordinary and accepted meaning. If the legislature may authorize the City of Detroit to enter into the proposed arrangement, it may authorize any other municipality to do so, and by concerted action between the various municipalities they may cover the State with means of rapid transit owned and operated by the municipality. This would enable the State to do by means of agencies called into being by itself what it cannot itself do, or what the Constitution forbids it to do."

Again, at page 565 the Court said, quoting from Anderson vs. Hill, 54 Mich., 477: "If the legislature has the authority to pass a law permitting the majority of the legal voters of a particular township to impose a tax to aid the State in a work of internal improvement, it has the authority to impose such by direct enactment without the intermediate step of a vote of the

people, and against their wish; and the rule is well settled, if it has not the power to impose such tax directly, it cannot authorize the imposition of the tax indirectly through a vote of the municipality or people."

It will be borne in mind, that the ostensible object and purpose of the McLeod Act, and the appointment of a street railway commission to purchase the Detroit system of railways, was solely to obtain a reduction of the rates of fare. And bearing this in mind, the language of the Court on page 249 is significant: "The City is already well supplied with means of transit, and if abuses exist in the management, the authorities have ample power to correct it."

In City of Indianapolis vs. Navin, decided in 1898, 41 L. R. A., 337, the defendant was complained of for the violation of an ordinance of the City of Indianapolis which provided that "no one shall ride on a car without paying fare of not in excess of five cents." The action was brought to collect the penalty provided for the violation of the ordinance in refusing to pay the rate of five cents prescribed by the city ordinance for riding upon the cars of the Citizens' Street Railway Company. The appellee filed an answer, admitting the passage of the ordinance, and its validity, and that he had ridden as alleged and had refused to pay the five cents demanded, but justified such refusal on the Act of the Legislature approved March 6, 1897, which act provided, that any cities in the State having a population of one hundred thousand or over, according to the United States Census of 1890, the cash fare shall not exceed three cents for any one trip or passage on a street railroad or road. It was insisted by the Street Railway Co. that the Act of 1897 was unconstitutional, because it impairs the obligation of a contract. The Court said: "Counsel for appellant do not point out any contract or obligation which is impaired by said Act. If it is the contract under which the Street Railway Company took possession of the streets of Indianapolis and constructed its

tracks, it is sufficient to say that the City was not authorized to enter into any contract which would prevent the Legislature from legislating upon the subject of fares. It is settled, that the Legislature has the power to *reasonably regulate* the rates of fare for transportation of passengers within the State on street railways. (Citing authorities.) * * * * The Revised Statutes of 1881 expressly reserves to the Legislature the right to amend, alter or repeal said Act at its discretion. * * * * The right of the Legislature, however, to regulate the fare upon street railroads organized under the Act of 1861, does not depend upon a reservation of the right to amend or repeal the act in Section of the Act. That power would exist even if the right to repeal or amend had not been reserved. In order to exempt a common carrier from legislative control over its rates of fare, it must appear that the exemption was made in its charter by clear and unmistakable language inconsistent with the exercise of such power by the Legislature. Covington & T. Turnp. Road Co. vs. Sandford, 164 U. S., 578; 41 L. ed. 560; Georgia R. & Bkg. Co. vs. Smith, 128 U. S., 174; 32 L. ed., 377; C. B. & Q. R. R. Co. vs. Iowa, 94 U. S., 155; 24 L. ed., 94. Appellant had the power to prescribe the terms upon which, and the time for which, a street railroad company organized under said Act of 1861 should occupy the streets of said city; but such contract, when made, was subject to the right of the Legislature to amend or repeal said act at its discretion, and no contract made by the city with a street railroad company could prevent the exercise of such power by the Legislature. It is clear, therefore, that said Act of 1867 does not impair the obligation of any valid contract of either the State or Appellant."

Section 1, Article 15, Constitution of Michigan, is as follows:

Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for muni-

cipal purposes. All laws passed pursuant to this section may be amended, altered or repealed.

In Detroit Street Railway Co. vs. Guthard, 51 Mich., 180, a question was considered which has an important bearing upon our contention here. It will be remembered that the Detroit Street Railway Company is one of the railway companies to whose rights the complainant here succeeds.

The 22nd section of the Act under which the Detroit Railway was incorporated provides that,

"Each and every railway company formed under this act shall pay to the treasurer of the State of Michigan an annual tax, at the rate of one-half of one per cent. on the whole amount of capital paid in upon the capital stock of said company; which said tax shall be estimated upon the last preceding report of said company, and shall be paid to the said treasurer on the first Monday of July in each year, *and shall be in lieu of all other taxes upon the property of said company.*"

The 31st section of the same act is as follows:

"The Legislature may at any time alter, amend, or repeal this act; but such alteration, amendment, or repeal shall not operate as an alteration or amendment of the corporate rights of companies formed under it, unless specially named in the act so altering or amending this act."

Section 22 remained in force and the companies were taxed under it until 1882, when in the general revision of the tax laws by the adoption of the plan of the Tax Commission it was repealed, and corporations generally, including train raiyway companies, were for the purposes of taxation put upon the same footing with natural persons and made taxable upon an same footing with natural persons, and made taxable upon the assessed valuation of property. There was no repeal of Section 31, and there was no express declaration that the repeal of Section 22 should be applicable to corporations previously formed and specially named.

After the enactment of the general tax law of 1882, the railway company was named on the tax rolls of the city and taxed with other persons. Defendant Guthard was receiver of taxes and was proceeding to make collection when suit was commenced.

The contention of the railway company was that so long as Section 31 remains in force it is not competent to tax the companies formed under this general incorporation act, otherwise than as provided by Section 22.

The Court said:

"This contention does not raise a question of constitutional power. By the Constitution of 1850 all acts of incorporation which should be thereafter passed were expressly made subject to alteration, amendment and repeal; and this act may therefore be changed in the legislative discretion. * * * The question then is whether with Section 31 in force, taxation by any other standard than that provided by Section 22 is competent and admissable. * * *

If to be taxed according to the provisions of Section 22 is one of the corporate rights of these companies within the meaning of Section 31, as plaintiffs contend it is, then they must be taxed under that section while Section 31 remains in force, or they cannot be taxed at all. * * *

Is, then, taxation by the standard and in the mode provided by Section 22 a corporate right of these corporations within the meaning of Section 31? We think not. The rights intended by that section, we think, are the essential and important rights of corporations formed for the particular purposes which the act had in view, as distinguished from the privileges and immunities which are not so fundamental, but which may nevertheless have value. An attempt to enumerate the rights here would be presumptious and without value; but in general terms it may be said that the franchise to construct and operate a road and to levy and collect reasonable *remunerative* tolls or

charges would be corporate rights, while exemption from the customary and uniform operation of the essential powers of government, like the power to tax and the power of police regulation, must be regarded as a privilege rather, or an immunity."

Judge Jackson in Grand Rapids case, 33 Fed. Rep., at 672, said:

"Looking at the question of legislative intent from another standpoint, we find that it is not the policy of the State of Michigan to grant irreapealable franchises and privileges to private corporations. Article 15, Sec. 1, of State Constitution, provides that 'corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed.' Now by the ordinance of 1880, if valid, the complainant, a corporation organized under the laws of the State, has secured not only an exclusive franchise belonging to the State, but an irrepealable privilege, such as the Legislature could not have conferred. Is it to be presumed that the Legislature, under its constitutional authority 'to confer upon incorporated cities such powers of a local legislative and administrative character as they may deem proper,' intended to invest the Common Council of Grand Rapids with the power to grant irrepealable franchises in or over the streets of that city and thereby confer upon the grantees privileges or franchises not subject to alteration, amendment or repeal—rights which the Legislature could not itself have directly conferred. If such a presumption is proper, the conclusion is reached that the agencies or creatures of the State may, in the exercise of derivative and delegated powers, do what the Legislature itself could not do. This would violate the well-settled rule that the Legislature cannot do indirectly, through the local government, what the people have by their

constitution restricted it in doing directly. Dill. Mun. Cor. (2nd Ed.), Sec. 263.

So, in reference to street railways, it is well settled by the authorities that, under general powers, such as the City of Grand Rapids possesses over its streets and highways, its Common Council could not confer upon individuals or a private corporation the exclusive right to use the city's highways for street railway purposes. See Cooley Const. Lim., 207, 208; Davis vs. Mayor of New York, 14 N. Y., 506; Milhau vs. Sharp, 27 N. Y., 611; Railroad Co. vs. Smith, 29 Ohio St., 201; Railroad Co. vs. Railroad Co., 10 Wall., 52; Railroad Co. vs. Railway Co., 12 Fed. Rep., 308; Railroad Co. vs. Railway Co., 24 Fed. Rep., 306; Railway Co. vs. Railway Co., 79 Ala., 465; Dill. Mun. Corp. (2nd Ed.), Sec. 558, and cases cited.

In Railroad Tax Cases, 13 Federal Reporter, 722-789, Mr. Justice Field, sitting as Circuit Justice, said:

"Whatever the State may do, even with the creations of its own will, it must do in subordination to the inhibitions of the federal constitution. It may confer, by its general laws, upon corporations, certain capacities of doing business, and of having perpetual succession in their members. It may make its grant in these respects revocable at pleasure. It may make the grant subject to modifications, and impose conditions upon its use, and reserve the right to change these at will. But, whatever property the corporations acquire in the exercise of the capacities conferred, they hold under the same guarantees which protect the property of individuals spoliation. It cannot be taken for public use without compensation. It cannot be taken without due process of law, nor can it be subjected to burdens different from those laid upon the property of individuals under like circumstances. *The State grants to railroad corporations formed under its laws a franchise, and over it retains control, and may withdraw or modify it. By the reservation clause, it retains power only over that which it grants.*

* * * *The reservations relate only to the contract of incorporation, which, without such reservation, would be irrepealable.* It removes the impediment to legislation touching the contract. It places the corporation in the same position it would have occupied had the Supreme Court held that charters are not contracts, and that laws repealing or altering them did not impair the obligations of contracts. The property of a corporation acquired in the exercise of its faculties is held independently of such reserved power, and the State can only exercise over it the control which it exercises over the property of individuals engaged in similar business."

And Judge Sawyer said, on page 777:

"The Legislature, under the various guarantees of the constitution, State and National, can only take away, limit, enlarge, or modify that which it gave. And that is given in the creative act is, simply, its capacities; its legal faculties, including all such as are essential to its corporate existence all those powers which are strictly corporate, being those powers which can only be given by legislative act; powers not possessed by natural persons or partnerships, acting in their natural, individual, or associate characters, independent of legislation. These strict corporate powers I attempt to define in Orton's Case, 6 Sawy., 187, 32 Fed., 457."

I submit, therefore, that it ought to be held by this Court:

1. That neither the train railway act nor the street railway act confers upon the Common Council of the City of Detroit the authority to make irrevocable contract in relation to the rates of fare upon street railways.

2. That the Common Council of the City of Detroit has not assumed to make an irrevocable contract in relation to rates of fare; that the language employed in the several ordinances is not of that clear, definite and certain character necessary to deprive the Common Council of the power of continuing regulation, even if it had authority so to do.

3. That the determination of the rates of fare is a function of government delegated by the State to the local authorities and cannot be bargained away.

4. That the fixing and determination of said rates of fare is the exercise of a legislative power delegated to the local authorities, and is at all times subject to alteration, amendment or repeal, pursuant to the provisions of Art. 15, Sec. 1, of the Constitution of the State of Michigan.

I respectfully submit, therefore, that the decree of the Circuit Court of the United States for the Eastern District of Michigan should be reversed, and the ordinance of August 11th, 1899, held valid and enforceable.

Respectfully submitted.

TIMOTHY E. TARSNEY,

Solicitor for Defendants and Appellants.

ARE THE EXTENSION ORDINANCES VALID?

The Detroit City Railway Ordinances of November 24, 1862 was limited to thirty years.

Sec. 20, Rec. p. 30.

"The powers and priviledges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage."

The same is true of the Grand River Street Railway ordinance adopted May 1, 1868.

Sec. 19, Rec. p. 56.

Likewise the Fort Wayne and Elmwood ordinance adopted January 31, 1865.

See Sec. 20. p. 73, Rec.

November 14, 1879, the Common Council of Detroit adopted an ordinance entitled "An Ordinance supplementary to an ordinance, entitle "An Ordinance permitting certain persons to establish and locate railways in the city of Detroit, approved November 24, 1862, and amendments thereto and for other purposes."

Rec. p. 35.

This ordinance contains, among other things, the following provision: "Sec. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway

by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to 30 years from date."

December 3, 1885, a like ordinance was adopted in relation to the Grand River Street Railway Company. In section 2 is the following language: "The powers and privileges conferred and the obligations imposed on the Grand River Street Railway by the ordinance passed May 8, 1868, and the amendments thereto, are hereby extended and limited to 30 years from and after the first day of January, 1886.

Rec. p. 58.

June 30, 1880, in a supplementary ordinance relative to the Fort Wayne and Elmwood Street Railway Company, section 3, provides: "The powers and privileges conferred and obligations imposed on the Fort Wayne and Elmwood Street Railway Company, by the ordinance passed Jan. 31, 1865, and the amendments thereto are hereby extended and limited to 30 years from this date."

By Act 486, Local Laws 1869, p. 1689, the charter of the city of Detroit was amended and section 19, of chapter 7 was made to read as follows:—

"Sec. 19: The style of all ordinances shall be: 'It is hereby ordained by the people of the city of Detroit'. No ordinance shall be revised, altered or amended by reference to its title only, but the section or sections of the ordinance altered or amended shall be re-enacted and published at length."

This language is substantially the same as that contained in section 25 of article 4 of the Michigan state constitution.

In Mok vs. Detroit B & S Association 30 Mich., 511, the Supreme court held an act which incorporated within itself by mere reference another act, but with several changes

and modifications not made by the re-enactment of the section changed or modified, void under this provision of the state constitution.

"And it has frequently been held that the mischief designed to be remedied by the provision was the enactment of amendatory statutes,—by the insertion of certain words or the substitution of one phrase for another in an act or section referred to but not published,—in terms so blind that legislators themselves were sometimes deceived with regard to their effect and the public from the difficulty in making the necessary examinations and comparisons failed to become appraised of the changes made in laws."

People vs. Mahaney, 13 Mich., 481.
East Saginaw Manufacturing Co vs. E. Saginaw 19 Id. 259.
Mok vs. Detroit and B & S Association 3) Id, 511.
Gordon vs. Peeple, 44 Id. 485.
Attorney General vs. Parcell. 100 Id. 107.

It strikes me that these several amendatory ordinances are void. because they assume to extend or carry forward the entire provisions of the original ordinances years beyond the time to which they were originally limited without re-enactment and without re-publication.

No. 152.

Reply Brf. of Tarsney for Appts.

FILED
OCT 22 1901
JAMES H. MCKENNEY

SUPREME COURT

OF THE UNITED STATES

Filed Oct. 22, 1901.

OCTOBER TERM.

THE CITY OF DETROIT, et al.
Defendants and Appellants.

vs.

THE DETROIT CITIZENS STREET RAILWAY COMPANY

No. 152

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, IN EQUITY.

REPLY BRIEF OF TIMOTHY E. TARSNEY, CORPORATION COUNSEL, FOR DEFENDANTS AND APPELLANTS.

TIMOTHY E. TARSNEY,
Solicitor for Defendants and Appellants.

DETROIT:
THE THOS. SMITH PRESS, 42-44 LARNED ST., W
1901.

SUPREME COURT

OF THE UNITED STATES.

CITY OF DETROIT, ET AL., *Defendants and Appellants,* vs. THE DETROIT CITIZENS' STREET RAILWAY COMPANY, *Complainant and Appellee.*	No. 152.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan, In Equity.

Reply Brief of Timothy E. Tarsney, Corporation Counsel, for defendants and appellants.

I.

It is contended by the learned counsel for the Appellee that the street railway provisions of the Tram Railway Act and the Street Railway Act of 1867 are in pari materia, and must be construed together.

At pp. 25-28 of my original brief the contention was made that the provisions of the Street Railway Act became immaterial in construing the powers of the present company— they

obtained through the purchase of the property or franchises of the Detroit City Railroad Company, Grand River Street Railway Company and the Fort Wayne and Elmwood Railway Company—because all these companies were organized under the Tram Railway Act and all the rights and privileges granted by the city to such company by the several ordinances referred to were with reference to the Tram Railway Act under which such original companies were incorporated.

I think it is quite manifest from a comparison of the two acts that the Legislature of the State of Michigan did not intend to bring within the scope of Section 13 of the street railway act the street railway companies that had previously been organized under the Tram Railway Act.

The contention of counsel for appellee is based upon the provisions of Section 29 of the Street Railway Act, which reads:

"Sec. 29. All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

Running through the provisions of the Street Railway Act a distinction is maintained between companies *organized under the provisions of said Act* and the street railway companies organized under the provisions of other laws.

In Sec. 13 it is provided that "*Any street railway* corporation *organized under the provisions of this act*, may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations, and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers, in and upon the lines of such streets and

ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets."

Laws of 1867, p. 46.

By Section 15: "*Any Street Railway Company* may also purchase and acquire" rights and property.

Section 16: "*Every Street Railway Company*" may issue bonds and mortgages.

Section 18: "*Ever Street Railway Company*" is required to lay its track, etc.

By Section *26*: "Each and every railway company *formed under this act*" shall pay the specific tax provided for therein.

Section *27*: "*Every company incorporated under this act*" shall commence construction within one year.

I infer that it was the legislative intent to leave the companies that had been organized for street railway purposes to be controlled by the provisions of Section 34 of the Tram Railway Act, which reads as follows:

"Sec. 34: All companies formed for such purpose shall have the exclusive right to use the same: Provided, however, That no such company shall be authorized to construct a railway under this act, through the streets of any town or city, without the consent of the municipal authorities of said town or city; and under such regulations, and upon such terms and conditions, as the authorities *may from time to time prescribe*."

If such were not the purpose, then why distinguish between companies organized *under the provisions of this and any street railway company?* The same distinction is noted in Section 14, which provides that, "After any city, village or township

shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

This distinction is made quite clear when we consider that the Street Railway Act was approved March 5, 1867, and took immediate effect, and that 22 days later an Act was approved amending the Tram Railway Act, in which Section 34 was re-enacted and amended so as to read:

"Sec. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railway constructed, owned or held by them: Provided, That no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe: Provided further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

Laws, 1867, p. 256.

The Tram Railway Act was further amended by Act No. 91, of the Laws of 1871, and a new section was added thereto, to stand as Section 42, which reads:

"Sec. 42. All the provisions of this act, as amended, shall be applicable to *all* corporations now organized under this act, as though specifically named."

Laws, 1871, p. 132.

So that the last legislative declaration upon the subject of street railways so far as it appertains to any question involved in this case is contained in the Tram Railway Amendment of March 27, 1867 and the Amendment of 1871, and being the last enactment upon that subject, I assume that it controls.

If the street railways that had been organized under the Tram Railway Act were for any purpose intended to be brought within the provisions of the Street Railway Act, it would be because Section 29 of the Street Railway Act, above quoted, sweeps such companies within its provisions, but Section 29 cannot be sustained as a valid enactment under the constitution of the State of Michigan. Section 20 of Art. 4, Constitution of Michigan, provides that "No law shall embrace more than one object, which shall be expressed in its title." The title of the Street Railway Act is, "AN ACT TO PROVIDE FOR THE FORMATION OF STREET RAILWAYS." The Supreme Court of Michigan have held that the purposes of this provision of the constitution was to arrest corruption and "log-rolling" in legislation and the insertion by dexterous management of clauses in bills of which the titles gave no intimation, and thus securing their passage by legislative bodies whose members were not generally aware of their intention and effect.

People vs. Mahaney, 13 Mich., 481-494.
Kurtz vs. People, 33 Mich., 279.
Thomas vs. Collins, 58 Mich., 64.
Bissel vs. Probate Judge, 58 Mich., 237.
Atty. General vs. Weimar, 59 Mich., 580.
Davis vs. Supervisors, 89 Mich., 295.

The constitution requires that titles shall be truthful indicies of legislation.

Wardle vs. Cummings, 86 Mich., 395-401.

Under our constitution the title of an act is significant and usually controlling in determining its scope. The body of the statute must be reasonably harmonious with it.

McKellar vs. Detroit, 57 Mich., 158.
The Northwestern Mfg. Co. vs. Circuit Judge, 58 Mich., 381.
Booth vs. Eddy, 38 Mich., 245.

Titles may be as general or as specific as the Legislature sees fit to make them, but the body of the act must be confined in its purposes to the object expressed in the title. And when the act is broader than the title, if after striking out all not indicated by the title, what is left is complete, in itself capable of execution and wholly independent of what was rejected, the act may be sustained.

Callahan vs. Chipman, 59 Mich., 610.
Skinner vs. Wilhelm, 63 Mich., 568.
Supervisors vs. Auditor General, 68 Mich., 659.
Ellis vs. Hutchinson, 70 Mich., 154.

The title of the Street Railway Act, "AN ACT TO PROVIDE FOR THE FORMATION OF STREET RAILWAY COMPANIES," under the above rules, is no doubt, sufficient to authorize the organization of street railway companies thereunder and to define the rights, powers, prvileges, duties and liabilities of such companies, but such title is not broad enough to warrant the sweeping in to such act corpora-

tions not formed or organized thereunder, but which are governed and controlled by different provisions of law.

In *Isle Royale, etc., Corporation vs. Osmun*, 76 Mich., 162, it appeared that in an Act "to revise the laws providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, mineral, coal, and other ores or minerals, and to fix the duties and liabilities of such corporations." There was incorporated a section reading: "Foreign corporations, organized for the purposes contemplated by this act, upon filing copies of their charter or articles of incorporation, as provided in section five, may carry on business in this State, and shall enjoy all the rights and privileges, and be subject to all the restrictions and liabilities, of corporations existing under this act."

The Secretary of State refused to file Articles of Association of an English Corporation. An application was made for mandamus to compel the Secretary to file such articles. Mr. Justice Campbell, in the majority opinion, quoting Article 4, Section 20, of the Constitution, which declares that "No law shall embrace more than one object, which shall be expressed in its title," said:

"This section has been applied by our decisions to multifariousness in the creation or amendment of general corporation laws. Citing *Skinner vs. Wilhelm*, 63 Mich., 568; *People vs. Father Matthew Soc.*, 41 Mich., 67. And in *Mok vs. Det., etc., Association*, 30 Mich., 511, a statute which authorized bodies for one purpose to be incorporated, with some modifications, by reference to a previous statute on a similar subject, tha titself provided that corporations for building and leasing might be organized under the provisions of the statute—which in its revised form is now before us—concerning companies for mining and manufacturing metals and mineral products, was held void for similar reasons." And he said further: "If

Section 23 is intended to confer powers on foreign corporations as such, it is not within the title or general purpose of the statute or of the constitutional provision."

No one looking at the title of the Street Railway Act and seeing that it provided for the "formation" of street railway companies would dream for a moment that hidden somewhere within its provisions was a design to confer rights and powers upon street railways not formed under its provisions. Again, Section 29 is obnoxious to the provisions of Section 25 of Article 4 of the Constitution of Michigan, which declares that, "No law shall be revised, altered or amended by reference to its title only, but the act revised and the section or sections of the act altered or amended shall be re-enacted and re-published at length." This section of the constitution was under consideration in *Mok vs. Detroit Building and Savings Association*, 30 Mich., 511. Wherein an Act "To authorize the formation of corporations for building and leasing houses and other tenements" provided that corporations indicated in the title might be formed under the provisions of an Act "to authorize the formation of corporations for mining, smelting or manufacturing iron * * * or other ores or minerals, and for other manufacturing purposes," and should have and possess all the rights, and be subject to all the liabilities provided in said act and the acts amendatory therof. Another act was passed which provided that, "corporations for building and savings associations may be formed and incorporated under the provisions" of the act of 1855, the substance of which has already been given.

Mr. Justice Cooley in a very elaborate opinion held this legislation void under the constitutional provision above quoted, in which he said: "Alteration made in the statutes by mere reference, and amendments by the striking out or insertion of words, without reproducing this statute in its amended form,

were well calculated to deceive and mislead, not only the Legislature as to the effect of the law proposed, but also the people as to the law they were to obey, and were perhaps sometimes presented in this obscure form from a doubt on the part of those desiring or proposing them of their being accepted if the exact change to be made were clearly understood. Harmony and consistency in the statute law, and such a clear and consecutive expression of the legislative will on any given subject as was desirable, it had been found impracticable to secure without some provision of this nature; * * *"

At the close of his opinion on page 529, he said: "What has been attempted here is, to duplicate an act, but at the same time t oaccommodate it by indirect amendments to a new class of cases, in disregard of the constitutional provision which requires *each act of legislation to be complete in itself*, and forbids the enactment of fragments which are incapable of having effect or of being understood until fitted into other acts after by construction or otherwise places have been made for them. No such legislation can be sustained."

Speaking of this decision in *Burton vs. Schildbach*, 45 Mich., 504, at page 508, Judge Cooley said:

"The defect in the act was found to be that it was not complete and sufficient in itself to permit of incorporations under it, and that it undertook to accomplish the purpose by reference to an indirect and blind amendment of a previous statute, whereas the Constitution requires that all amendments of statutes shall present the provisions in full as amended."

How can the contention of the learned counsel for the complainant and appellee, in this case, that the Street Railway Act controls the provisions of the Tram Railway Act, thus operating as an indirect amendment thereof, without violating the constitutional provision which forbids any amendment without re-enactment of the section amended.

I therefore respectfully submit that in the consideration of this case the relative rights of the city and the Street Railway Company must be governed and controlled solely by the provisions of the Tram Railway Act, and that this act contains a continuing power of regulation.

In what I have said I do not desire to be *understood as conceding* any other or different construction should be placed upon the street railway act if it should be held to be applicable here, for no power can be found in the Street Railway Act authorizing the city authorities to enter into a time contract, irrevocable in its nature, with the street railway companies.

II.

In he brief of Messrs. Brennan & Donnelly, at pages 33-35, Section 19 of the Detroit Street Railway Ordinances is discussed

Section 19. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways."

And it is contended by the learned counsel that, "The plain, common sense meaning of it is, that the Council thought there might be some matters not treated of or regulated in the original grant, and that it would be wise to in express terms reserve the power to make such additional rules as might be necessary, in the opinion of the Council, to protect the interests of the public.

It is respectfully submitted that this reservation is not confined to such further additional rules, but should be construed with reference to the exigencies that might from tim eto time arise and changed conditions demand. The construction contended for by counsel would tie the hands of the city authori-

ties from making rules and regulations for the safety, comfort and welfare of the inhabitants. If no consent of the railway company could be obtained, we might still be operating cars through our streets according to the primitive methods of 1862. To illustrate: Section 7 of the Detroit Railway ordinance provided that, "Section 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require and the Common Council shall prescribe. Provided, always, that said Common Council will not require them to run regular cars oftened than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day, from the fifteenth day of October to the fifteenth day of April."

Detroit, in 1862, was a city of about 50,000 people. Its residents all lived within a comparatively short distance of the business center and street railways was in an experimental stage. The only motive power known was animals. The rails were strap rails. Suppose no changes had been made in this section, to-day, with a population six times greater than that of 1862, when the interests require that cars shall run not to exceed two or three minutes apart, with electricity as motive power and the speed fifteen to twenty miles an hour, and rails weighing ninety pounds per yard, the public necessities demanding this improved method of transit, could it be successfully contended that the city was powerless to require the railroad company to keep pace with the progress of the age and that it must content itself with bob-tailed horse-cars to run not to exceed six miles per hour nor oftener than once in twenty minutes, a mere statement of the proposition, it strikes me, conveys the answer. Or as put by the Michigan Court in *People vs. Detroit Citizens' Street Railway Company*, 116

Mich., 132: "On the other hand, is it probable that the railway company would be willing to accept an ordinance running for 30 years which limited it to the use of animal power in the transportation of its cars, and to a speed of six miles an hour? We think this contention is unreasonable." Such has not been the construction placed upon these ordinances by the Michigan Supreme Court.

In *Detroit vs. Fort Wayne and Elmwood Railway Co.*, 90 Mich., 646, the railway company in the summer of 1890, in pursuance and under the authority of the ordinance, constructed a portion of its railway on Champlain street, under the supervision and in the manner approved by the Board of Public Works, and in every respect in full compliance with the terms and conditions and agreements of the ordinance under which it was operated. The method of construction adopted was the laying of ties which extended outside the rails. In 1891 the Common Council adopted a resolution directing the railway company to be caused to be removed so much of the railway ties as are outside of the stringers on whic htheir rails were placed in order that the street might be paved with a concrete foundation. The company refused to comply with this demand and mandamus was applied for and granted. The Court said: "The charter of the City of Detroit commits the regulation, supervision, and control of its streets to the Common Council. It empowers the Council to improve the same and to determine the nature and details of such improvement. It gives the Common Council the power to control, prescribe, and regulate the manner in which the streets shall be used and enjoyed. These powers are held in trust for the public benefit. They cannot be surrendered or delegated to private parties. All franchises granted or contracts made, with reference to the use of streets must be made, not only with due regard to their lawful and proper use by

others, but subject to the exercise by the municipality of the powers referred to."

The ordinance under consideration there contained the same reservation as is contained in Section 19 of the Detroit City Railway ordinance.

Again, in *Detroit vs. Fort Wayne & Belle Isle Railway Co.*, 95 Mich., 456, quoted by brother Baker in his brief, page 13, learned judge, after quoting the reservation, said: "In the absence of the reservation in the ordinance it could not be said that the rights and franchises of the respondent are destroyed or unreasonably impaired by the requirement sought to be enforced; but, independently of this statutory provision, the reservation contained in the ordinance itself, viz., 'to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public,' certainly includes the right to enact an ordinance that the compnay shall, for the accommodation of the public, keep tickets for sale upon its cars."

In *City of Kalamazoo vs. Michigan Traction Company*, decided May 7, 1901, 8th Detroit Legal News, p. 82, 85 N. W., p. 1067. Was mandamus to compel the traction company, a street railway company, to comply with certain requirements of the Common Council. In Section 5 in the ordinance it was provided that all track * * * may be of the style known as T rail or girder rail, *at the option of said grantee.* * * * The same shall not weigh less than forty pounds to the yard if T, and not less than fifty-two pounds to the yard if girder rail. Section 23 of said ordinance as originally passed is as follows: "Section 23. The said City Council hereby reserves the right to make such further rules, orders and requirements as may from time to time be deemed necessary to protect the interests, safety, welfare, and accommodation of the public in relation to said railway, not inconsistent with the porvisions

of this ordinance, but they shall not reduce the rate of fare herein provided for, or alter or repeal section one of this act." The Common Council subsequently amended Section 5, changing the option of the kind of rails from the grantee to the grantor. The Common Council passed a resolution directing the company to take up the rail now in use and replace the same with an eight-inch grooved girder rail. The railway company refused to comply with this requirement.

The Court in passing upon the question, while conceding that contractual rights in streets and highways might be obtained, ye, "The authorities do not, however, go so far as to hold that the grant of a right to use a certain kind of rail is irrevocable. On the contrary, the conclusion seems to be that, when the use of another kind of rail becomes necessary for the protection and safety of the public, the right to use the specified article must give way to the necessities and requirements of the public."

Again referreing to the reserved power contained in Section 23: "This ordinance, fairly construed, cannot be held to mean that the respondent, in the construction of its roadbed in accordance with the provisions of the ordinance, obtained the right, during the existence of its franchise, to maintain its roadbed and rails in the same condition as when laid. The ordinance contemplated improvements which experience might show to be essential, in the growth of the city, for the convenience, welfare, and safety of travelers upon its streets, and the right to compel such improvements was reserved."

I think, fairly construed, these reserevations were intended to meet any changes in conditions and to make rules, orders and regulations for the benefit of the public, even though such rules, orders and regulations cover matter that was originally specified.

III.

In the brief of Messrs. Brennan and Donnelly, pages 28-33, it is contended that rates of transportation, though within the police power of the State, is nevertheless the subjec matter of contract. I have fully discussed this proposition in my original brief (pages 72-86), but the subject is of such grave importance that I may be pardoned for briefly referring to it again.

The current of Michigan and Federal authority favor my contention that the police power cannot be delegated or bargained away nor can a municipal corporation by any contract hamper itself in the exercise of it.

Judge Cooley, in *Gale vs. Kalamazoo*, 23 Mich., 344, said: "What would be thought proper for the village this year, might be found worse than useless the next, and no official prescience could determine with absolute certainty what changes a few years might work. Indeed it is impossible to predicate reasonableness of any contract by which the governing authority abdicates any of its legislative powers, and precludes itself from meeting in the proper way the emergencies that may arise. These powers are enforced in order to be exercised again and again, as may be found needful or politic, and those who hold them in trust to-day are vested with no discretion to circumscribe their limits or diminish their efficiency, but must transmit them unimpaired to their successors. This is one of the fundamental maxims of government, and it is impossible that free government with restrictions for the protection of individuals or municipal rights could long exist without recognition."

In *Pontiac vs. Carter*, 32 Mich., 164, the same learned justice said: "A city cannot even by contract divest itself of any of its legislative powers, which was conferred upon it to be exer-

cised again and again as long and as often as occasion shall require."

In *Petz vs. City of Detroit*, 95 Mich., 169, it is said: "The police power cannot be abridged, granted or bargained away, or impaired by contract."

And Mr. Justice McGrath, in 95 Mich., 456, quoted by Mr. Baker on page 13 of his brief, said: "It cannot be contended that the relation created by the ordinance is contractual, and at the same time that the reservation was of the right to enact police regulations only. The right to exercise police power exists indepnedent of the reservation, and could not be bartered away."

The Supreme Court of the United States, in *Stone vs. Farmers' Loan and Trust Company*, 116 U. S., 307, in speaking of the power of regulation of transportation rates, seemed to doubt the power to enter into binding contracts in relation thereto, and said: "This power of regulation is a power of government, continuing in its nature; and *if it can be bargained away at all*, it can only be by words of positive grant or something which is in law equivalent."

In *New York & New England Railroad Co. vs. Bristol*, 151 U. S., 556, the Court said: "The governmental power of self-protection cannot be contracted away."

In *Wabash Railroad vs. Defiance*, 167 U. S., 88, it was said: "Indeed, the right of a city to improve its streets by regrading or otherwise is something so essential to its growth and prosperity that the Common Council can no more denude itself of that right than it can of its power to legislate for the health, safety and morals of its inhabitants."

So in *C., B. & Q. R. R. Co. vs. Nebraska*, 170 U. S., 57, which contains a very clear exposition of the law upon this subject:

"Usually, where a contract, not contrary to public policy has been entered into between parties competent to contract, it is not within the power of either party to withdraw from its terms without the consent of the other; and the obligation of such a contract is constitutionally protected from hostile legislation. Where, however, the respective parties are not private persons, dealing with matters and things in which the public has no concern, but are persons and corporations whose rights and powers were created for public purposes, by legislative acts, and where the subject matter of the contract is one which effects the safety and welfare of the public, other principles apply. Contracts of the latter description are held to be within the supervising power and control of the Legislature when exercised to protect the public safety, health and morals, and that clause of the Federal Constitution which protects contracts from legislative action cannot in every case be successfully invoked. The presumption is that when such contracts are entered into it is with the knowledge that parties cannot, by making agreements on subjects involving the rights of the public, withdraw such subjects from the police power of the Legislature."

Michigan Telephone Compan vs. City of Charlotte, 93 Federal, 11, the city had given its consent to the construction of a telephone line through Main street. Subsequently by ordinance the city directed the poles to be removed from Main street to an alley next adjoining said street. It was urged that the ordinance amounted to the impairment of the obligation of a contract.

Judge Severns in passing upon this contention said: "But here again assuming that the contract exists, it is well settled that with respect to contracts of this character they are subject to such incidental modification as results from legislation required in the public interest. It is a fundamental proposi-

tion that the Legislature cannot deprive itself by contract of the power to pass such laws as are necessary for the general welfare of the public. Prominent among the kinds of legislation which may be enacted for the purpose are such as are designed for the public safety and convenience." Citing in support of his position, *N. Y. & N. E. R. R. Co. vs. Bristol*, 151 U. S., 556; *Wabash R. R. Co. vs. City of Defiance*, 167 U. S., 88; *C., B. & Q. R. R. Co. vs. Nebraska*, 170 U. S., 57.

It seems clear from the recent trend of authorities that it is quite proper to speak of the relations existing between the street railway company and the city as contractual; but that such contract is always made with reference and subject to the laws as they exist or such laws or regulations as may from time to time be enacted in the public interest. That the parties so contemplated when they entered into such engagement and that it is not an impairment of the obligation of a contract to impose new terms or enact new regulations which the public interest, safety or welfare may require.

IV.

General Duffield, in the 8th paragraph of his brief at page 35, refers to my 5th contention, page 86, of my orginal brief: "The regulation of fares in the ordinances in question may be supported by the reserve power of alteration, amendment or repeal contained in the constitution and statutes of Michigan." Which declares that "corporations may be formed under general laws but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed." And he disposes of it by wafting it away as "fog before a gale" and relies upon the decision of this Court in *City Railway Company vs. Citizens' Street Railway Company*, 166 U. S., 557-563. But a moment's reflection will show that the cases are clearly distin-

guishable. There is no provision in the Constitution of the State of Indiana that all laws relative to corporations are subject to alteration, amendment or repeal. In that case the right was reserved to the General Assembly in the legislative act to amend or rpeal at their discretion, and this Court very properly held that that was a right reserved to the General Assembly itself and was not delegated to the Common Council of the city. I content myself with a reference to the language of Mr. Justice Jackson, quoted on page 108 of my original brief, where he was discussing the validity of an ordinance of the City of Grand Rapids, and referred to the constitutional provision above quoted and said: "Is it to be presumed that the Legislature, under its constitutional authority 'to confer upon incorporated cities such powers of a local, legislative and administrative character as they may deem proper,' intended to invest the Common Council of Grand Rapids with the power to grant irrepealable franchises in or over the streets of that city and thereby confer upon the grantees privileges or franchises not subject to alteration, amendment or repeal—rights which the Legislature itself could not itself have directly conferred. If such a presumption is proper, the conclusion is reached that the agencies or creatures of the State may, in the exercise of derivative and delegated powers, do what the Legislature itself could not do. This would violate the well settled rule that the Legislature cannot do indirectly, through the local government, what the people have by their constitution restricted it in doing directly."

V.

The word "consent" as used in this statute received a construction by the Supreme Court of Appeals of the Sixth Circuit, in *Detroit Citizens' Street Railway Company vs. Detroit*, 64 Fed., 628, where Judge Lurton said: "Our conclusion

upon this branch of the case is: First, that the Legislature meant by the term 'consent' no more and no less than would be meant by 'right of way' or 'easement.' 'Consent' in the connection used is synonymous with easement or right of way." And the Michigan Supreme Court in *Street Railway Company vs. Detroit*, 110 Mich., 384, said: "There is a limitation upon the right of the company to construct a railway, which is that, before doing so, the company shall procure the consent of the municipal authorities under such regulations and upon such terms and conditions as said authorities may from time to time prescribe. Fairly construed, this language relates to the terms and conditions to be prescribed for the contemplated occupancy of streets the use of which is presently contemplated by the parties to the contract, and the 'terms and conditions' relate to such occupancy of the streets."

I respectfully submit that there is a marked distinction between the easement or right of way in the street that is "consented to" by the Common Council and the regulations and conditions under which the railway may be from time to time operated; the easement or right of way conveys, no doubt, a property right; the city having the general control of streets, such consent must come from the city. The State, however, has control of the formation and existence of corporations, and likewise the State has control and the power of regulation of rates of transportation. The State has delegated to the city the power of regulation and the fixing of terms and conditions from time to time, and in doing so, the city acts not for itself, but for the State under its delegated power.

It is possible that this Court may treat the validity of the extension ordinances of November 14, 1879, June 30, 1880 and December 3, 1885, as *res judicata*, under the decision in the 64 Federal, but the sole question involved or discussed in that case was the power to grant a franchise for a period

extending beyond the lifetime of the corporation to which it was granted. Such extension ordinances are certainly an alteration of the original ordinances without re-enacting them. In one short paragraph it was declared that "the powers and privileges conferred and obligations imposed on the Detroit City Railway by the ordinance passed November 24, 1862, and the amendments thereto are hereby extended and limited to thirty years from date." Those ordinances would have expired by limitation in 1892, 1895 and 1898. The two last had not expired at the time such litigation was begun. The provision of the Detroit charter as amended by Local Acts 1869, page 1689, reads: "The style of ordinance shall be: 'It is hereby ordained by the Common Council of the City of Detroit.' No ordinance shall be revised, altered or amended by reference to its title only, but the section or sections of the ordinance altered or amended shall be re-enacted and published at length."

If this should be regarded as still an open question, then I respectfully submit that these extension ordinances were passed in violation of the above quoted charter provisions, and hence void for the reasons stated by me in the last pages of my original brief. This Court in *Cromwell vs. Sac County*, 94 U. S., 351, at page 353, held that "where a second action between same parties is upon a different demand, that a prior judgment operates as an estoppel only as to matters in issue or points controverted upon which such demand was based." Mr. Justice Field said: "In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

And Judge Taft, in *City of Detroit vs. Detroit Railway*, 56 Fed., 893, in passing upon the validity of the Detroit Railway extension, held that the city was not concluded by a judgment sustaining that part of the ordinance fixing tax rate for the extended period. If the doctrine of estoppel is to be applied at all it can only extend to the Detroit City Railway ordinance and cannot affect the Fort Wayne & Elmwood or the Grand River ordinance, because it was only the Detroit City Railway ordinance that was litigated in the former controversy, hence, the rule followed by this Court in *Chance Mining Co. vs. Tyler Mining Co.*, 157 U. S., 687, holding decree as to priority of location on part of mining claim not conclusive as to the rest. Mr. Justice Brewer said: "The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dispute in this action. The judgment in that case is therefore not conclusive in this as to matters which might have been decided, but only as to matters which were in fact decided."

To the contention that the city should be held estopped because the railway company in apparent reliance upon the validity of these extension ordinances has expended large sums of money, I readily grant that at first blush such claim appeals strongly to the conscience, and if we were dealing with an arrangement between private parties, each acting in relation to their own interests, or if the investment had been made for the benefit of the city, I would readily concede the force of the contention, but we are dealing here with a question of power.

As was said by Judge Taft in *City of Detroit vs. Detroit City Railway*, 58 Fed., 893: "The investments of the street railway company were not given to the city. They were investments of private funds in private property, for private

purposes, to subserve the public interest, on the faith of the supposed permanence of the investment. Those who made the investment knew, or ought to have known, the statutory powers under which the City Council acted, and if I am right in the conclusion already stated with reference to those powers, ought, in the necessary theory of the law, to have known that they were investing on the faith of a grant which would last only to May 9, 1893. Where full knowledge of the powers of a corporation are had by the person dealing with it, he cannot plead estoppel by reason of a mistake of law, to avoid the claim of *ultra vires*. This is especially true in cases where the corporation is a municipal corporation and is exercising powers in trust for the public. *Rens vs. City of Grand Rapids*, 73 Mich., 237; *Bogart vs. Lamotte Twp.*, 79 Mich., 294; *Spitzer vs. Village of Blanchard*, 82 Mich., 234."

And this Court in *Hamilton Gas, Light & Coke Co. vs. City of Hamilton*, 146 U. S., 258, in answer to the same contention there made, said: "It may be that the stockholders of the plaintiff supposed at the time it became incorporated and when they made their original investment that the city would never do what evidently is contemplated by the ordinance of 1889. * * * It is one of the contingencies to which parties look now in making a large class of contracts that they may be affected in many ways by state and national legislation."

I respectfully submit that it should be decreed that the City of Detroit possesses the power to pass the amendatory ordinances.

TIMOTHY E. TARSNEY,
Corporation Counsel,
Attorney for Defendants and Appellants.

SUPREME COURT OF THE UNITED STATES

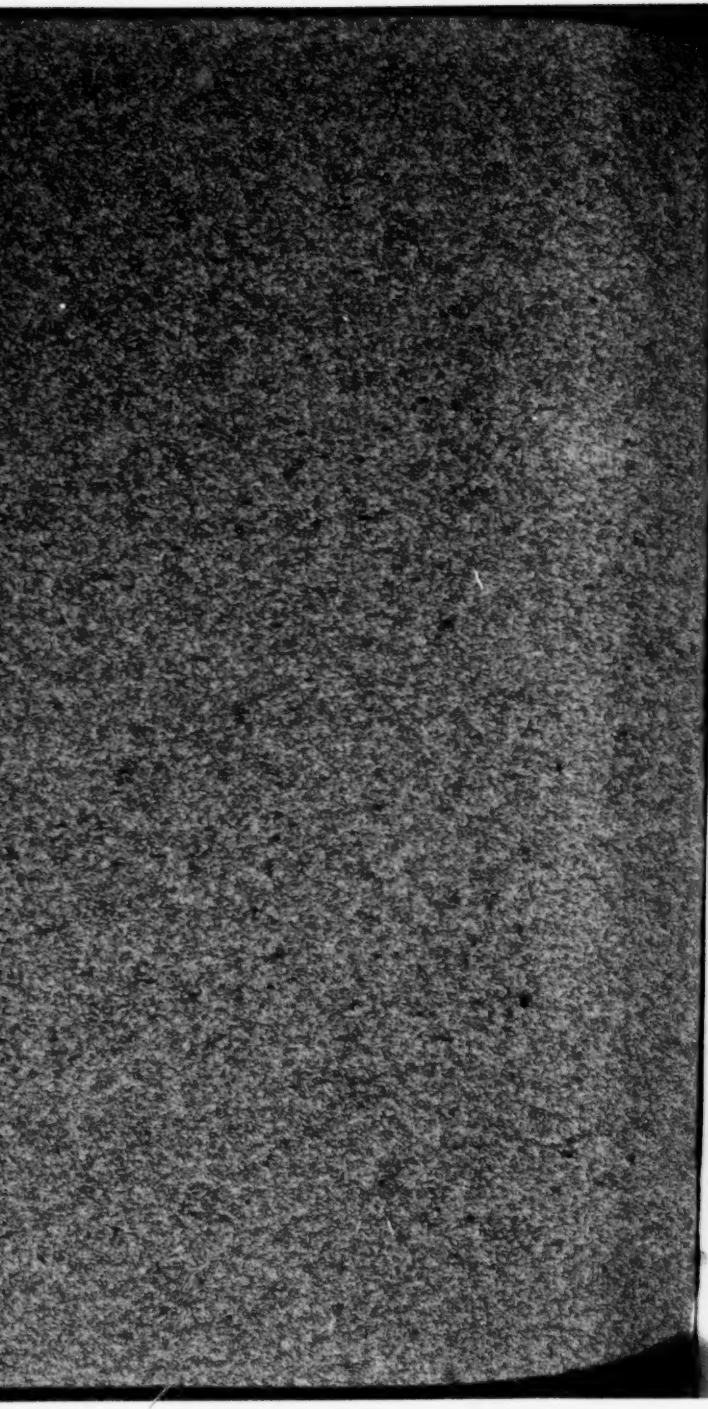
OCTOBER TERM.

THE CITY OF DETROIT, et al.
Defendants and Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

No. 182.

Petition and Brief for Rehearing.

TIMOTHY E. TARSNEY,
Solicitor and of Counsel for Petitioners and Appellants.



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No. 152

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor,
CHARLES FLOWERS, Corporation Counsel,
Appellants.

Vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Appellee.

PETITION FOR RE-HEARING.

Having carefully examined the opinion of this honorable Court, I think that with propriety I may ask the Court to consider whether this case be not one in which it will be proper to grant a re-hearing to the appellants on the grounds that:

1. It nullifies a provision of the Constitution of the State of Michigan intended to safeguard the public welfare.

2. It overrides and holds for naught a legislative provision in the Charter of the City of Detroit designed for the protection of the inhabitants thereof.

3. It is a radical departure from the principles of law heretofore frequently announced by this Court.

I.

I endeavored to point out in my original brief, pages 86 to 111, that under the Constitution of the State of Michigan it was not within the power of the Legislature to enact irrepealable laws nor to confer upon municipalities the like power. Section 1 of Article 15 of the Constitution of Michigan reads:

> "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

The learned writer of the opinion on page 11 says:

> "In Pingree vs. Michigan Central Railroad Company, (118 Mich. 314) decided in 1898, the Supreme Court of Michigan held that Section 15 of the laws of 1846, relating to the incorporation of the Michigan Central Railroad Company and other sections mentioned in the Act, which provided that the company might fix, regulate and receive tolls taken for the transportation of passengers or property on the railroad subject only to the limitation, as to passengers, of three cents per mile, etc., the company having the power to charge for tolls and transportation such sums as might be lawfully established by the by-laws of the company, and the board of directors having power to pass all by-laws necessary for carrying into execution all powers vested in the company, conferred a contract right on the corporation to fix tolls within the limits of three cents per mile, which right could not be violated by the acts of a succeeding legislature."

The writer hereof was not unmindful of the fact that it had frequently been held that unless prohibited by constitutional provisions, the State had the authority to enter into contracts binding and irrevocable in their character,

and it is the distinction between that class of cases and the one we are considering I have endeavored to point out. The Michigan Central Charter and contract was approved March 28, 1846. Previous to that time the State had engaged extensively in works of internal improvement. It had commenced the construction of three lines of railroad across the State, including the Michigan Central. It had engaged in the construction of canals. These works were carried on to that extent that it threatened the bankruptcy of the State. The public became alarmed and demanded that such work at State expense must stop. The Legislature had property to sell. It sold the Michigan Central railroad for $2,000,000. It entered into a contract in which it declared that:

> "The State reserves the right at any time after for 30 years from the passage of this act, by a vote of two-thirds of each branch of the Legislature, to alter, amend or repeal the same; Provided, that said company shall be compensated by the State for all damages sustained by reason of such alteration, amendment or repeal."

> "The rights and franchises vested or which may be vested in the company under or by virtue of said Act shall not any in manner be prejudiced or affected save as herein provided or by judicial proceedings or by a re-purchase of said railroad to be made by the State as in said section (36) provided."

The Constitution of Michigan then in force contained no limitation upon the power of the Legislature except as was contained in the "bill of rights," none of which affected its power to pass irrepealable laws. And while it is true as stated by the learned Judge that Pingree vs. the Michigan Central was not decided until 1898, yet the question involved was that of a contract made between the State and the company in 1846. The present Constitution of Michigan was framed in 1850. Prior to the framing of this Constitution, the Legislature under its unrestrained power, had by special act, incorporated numerous plank road companies, the life of which was generally 60 years, and all containing a provision that they should not be

subject to alteration, amendment or repeal for 30 years. At the session in 1848 49 such companies were chartered. Indeed, it would appear that nearly every public highway in the State had been surrendered to such corporations. The checking of such legislation was imperatively demanded for the safety of the State, and having this end in view, the constitutional convention adopted Section 1 of Article 15, above quoted, provided that all laws in relation to corporations should be subject to alteration, amendment or repeal. It is manifest then that while the Charter of the Michigan Central Railroad Company was properly sustained as a contract under the Constitution of 1835, it could not be sustained as a contract if made since the adoption of the Constitution of 1850, and the premises of the learned Justice fall to the ground. Surely if the Legislature of the State under this constitutional provision could not enact an irrepealable law, it is inconceivable how the Legislature possesses the power to confer upon a municipality authority which the Legislature itself does not possess. I quote again:

> "All laws passed pursuant to this section may be amended, altered or repealed."

If the Legislature in 1862 had assumed to fix the rates of fare upon the Detroit City Railway, such act would have been a law within the meaning of this constitutional provision. Instead of doing so, in pursuance of Section 38, Article 4, which provides that:

> "The Legislature may confer upon organized townships, incorporated cities, villages and upon the board of supervisors of the several counties such powers of a local, legislative and administrative character as they may deem proper." It conferred the authority to fix the fares upon street railways upon the city of Detroit, and though the instrument in which those rates are fixed is denominated an "ordinance" it is nevertheless a "law" within the meaning of both the State and the Federal Constitution, and it is a law, too, enacted by the State, through its delegated authority. This Court only

acquires jurisdiction of this case because this ordinance is a law within the meaning of Section 10, Article 1, of the Constitution which declares that, "No State shall ..... pass any ..... law impairing the obligation of contracts." It was upon this ground that this Court sustained jurisdiction in Hamilton Gas Light and Coke Co. vs. City of Hamilton, 146 U. S. 258. It is there said:

> "We sustain the jurisdiction of the Circuit Court because it appears that the defendant grounded its right to enact the ordinance in question and to maintain and erect gas works of its own upon that section of the municipal code of Ohio, providing that the city council of any city or village should have power, whenever it was deemed expedient and for the public good, to erect gas works at the expense of the corporation or to purchase gas works already erected therein, which section the plaintiff contends, if construed as conferring the authority claimed, impaired the obligation of its contract previously made with the State and the City."

In Capital City Gas Co. vs. DesMoines, 32 Fed., 824, it was likewise held that a municipal ordinance fixing gas rates is law of State. In Citizens' Railway Company vs. City Railway, 56 Fed. 751, it was held, the exercise by council of power granted by Legislature to grant street car franchises, when done by ordinance is "law" of state.

The ordinances then being laws passed pursuant to State authority must necessarily be subject to the provision of Section 1, of Article 15, of the Michigan Constitution and subject to alteration, amendment or repeal. *Therefore the railway companies accepting the ordinances must be held to have done so subject to the reserve power to alter, amend or repeal.* This has been so repeatedly and uniformly held in the cases cited by me in my original brief, 86-111, and in the Hamilton Gas Light case, supra. Approved in People vs. Cook, 148 U. S., 411, upholding tax

on corporations organized under statute to purchase foreclosed railroads, and in United States vs. Union Pacific Railway, 160 U. S., 37, where this Court held that the reservation to alter or amend railroad charters was not affected by subsequent contracts made by corporations. City Railway Company vs. Citizens' Street Railway Co., 166 U. S., 557-563, cited on page 21 of the opinion affords no support for the contention made here. *There is no provision in the Constitution of the State of Indiana that all laws relative to corporations are subject to alteration, amendment or repeal. In that case the right was reserved to the General Assembly itself in the legislative act to amend or repeal at its discretion*, and this Court very properly held in that case that that was a right reserved to the General Assembly itself and was not delegated to the Common Council of the City. In the case we are considering, legislative power has constitutionally been conferred upon the city. The city enacts its laws called ordinances and it has the power to revise, alter or amend such ordinances. It would seem to necessarily follow that it is only the body that exercises the legislative power that has the power to alter or amend unless such power of alteration or amendment is expressly reserved to some other body. Equally unfortunate is the citation of the recent case of Detroit Citizens' Street Railway Company vs. The Common Council of the City of Detroit, 125 Mich., 673. No attempt had been made in that case to alter or amend the ordinance under consideration. The question of power to enact such an ordinance was the only question presented. Had the City attempted in that case to amend that ordinance, the question here might have been presented. Such ordinances may, perhaps with propriety be regarded as created contractual relations to continue until such time as the constitutional right of alteration, or amendment is exercised. This I infer was the meaning of this Court in New York and New England R. R. Co. vs. Bristol, 151 U. S., 556, where it is said:

> "The governmental power of self protection cannot be contracted away."

And again in Wabash Railroad Co. vs. Defiance, 167 U. S., 88, this Court said:

> "Indeed, the right of a city to improve its streets by regrading or otherwise is something so essential to its growth and prosperity that the Common Coun-

cil can no more denude itself of that right than it can of its power to legislate for the health, safety and morals of its inhabitants."

And the rule is more clearly stated by this Court in C., B. & Q. R. R. Co. vs. Neb., 170 U. S., 57:

> "Where a contract not contrary to public policy has been entered into between parties competent to contract it is not within the power of either party to withdraw from its terms without the consent of the other; and the obligation of such a contract is constitutionally protected from hostile legislation Where, however, the respective parties are not private persons, dealing with matters and things in which the public has no concern but are persons and corporations whose rights and powers were created for public purposes, by legislative acts, and where the subject matter of the contract is one which affects the safety and welfare of the public, other principles apply. Contracts of the latter description are held to be within the supervising power and control of the Legislature when exercised to protect the public safety, health and morals, and that clause of the Federal Constitution which protects contracts from legislative action cannot in every case be successfully invoked. The presumption is that when such contracts are entered into it is with the knowledge that parties cannot by making agreements on subjects involving the rights of the public withdraw such subjects from the police power of the Legislature."

Or as tersely stated by Judge Severns in Michigan Telephone Company vs. The City of Charlotte, 93 Federal, 11:

> "But here again assuming that the contract exists, it is well settled that with respect to contracts of this character they are subject to such incidental modification as results from legislation required in the public interest. It is a fundamental proposition that the Legislature cannot deprive itself by contract of the power to pass such laws as are necessary for the general welfare of the public."

As a result of the reckless legislation in the years just preceding the adoption of the present Constitution of Michigan, before referred to, it was declared in Section 9, of Article 14, of the Constitution of 1850, that:

> "The State shall not be a party to, or interested in, any work of internal improvement, nor engaged in carrying on any such work except in the expenditure of grants to the State of land or other property."

In 1899 the Legislature of Michigan attempted to confer upon the City of Detroit the power to purchase the street railway system. In Attorney General vs. Pingree, 120 Mich., 550, the Court held the act of the Legislature referred to as in violation of the above Constitutional Provision prohibiting the State from engaging in works of internal improvement and in answer to the contention that it was a limitation upon the power of the State and not the municipality the Court said at page 570:

> "If the Legislature may authorize the City of Detroit to enter into the proposed arrangement, it may authorize any other municipality to do so, and, by concert of action between the various municipalities, they may cover the State with means of rapid transit, owned and operated by the municipalities. This would enable the State to do, by means of agencies called into being by itself, what it cannot itself do, and what the Constitution forbids its doing."

If the State can confer upon municipalities the power to pass legislation not subject to alteration or amendment, then in the language of the Court in the above case, this would enable the State to do by means of agencies called into being by itself what it cannot do itself and what the Constitution forbids its doing. This is in keeping with the opinion of Mr. Justice Jackson in Grand Rapids E. L. & P. Co. vs. Grand Rapids E. E. L. & F. G. Co., 33 Fed., 659. Where in discussing the same constitutional provision invoked here, he said:

"Looking at the question of legislative intent, from another standpoint, we find that it is not the policy of the State of Michigan to grant irrepealable franchises and privileges to private corporations. Article 15, Section 1, of the State Constitution, provides that, 'Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed.' Now, by the ordinance of 1880, if valid, the complainant, a corporation organized under the laws of the State, has secured not only the exclusive franchise belonging to the State, but an irrepealable privilege, such as the Legislature could not have conferred. It is to be presumed that the Legislature under ints constitutional authority 'to confer upon incorporated cities such powers of a local, legislative and administrative character as they may deem proper,' intended to invest the Common Council of Grand Rapids with the power to grant irrepealable franchises in or over the streets of that city, and thereby confer upon the grantee privileges or franchinses not subject to alteration, amendment or repeal—rights which the Legislature could not itself have directly conferred. If such a presumption is proper, the conclusion is reached, that the agencies or creatures of the State may in the exercise of derivative and delegated power do what the Legislature could not. This would violate the well-settled rule, that the Legislature cannot do indirectly through the local government what the people by their Constitution have restricted it in doing directly." Dillon Mun. Corp., 2d Ed., Sec. 262.

I repeat, the effect of the recent opinion of this Court in this case is to nullify Section 1, Article 15, of the Constitution of Michigan of 1850.

II.

Mr. Justice Peckam entirely misapprehends my contention in relation to the ordinances of November 14, 1879, and June 30, 1880, and December 3, 1885. At page 19 of the opinion wherein he states that the objection being that the extending of the term of the consents beyond the time

limit of the corporate life of the companies was illegal and void. No such contention was made by me either in the briefs or the oral argument. My contention was and is that such extension ordinances were void because they violated the express terms of a legislative enactment contained in the Charter of the City of Detroit which is quoted in the last pages of my original brief, being Section 19 of Chapter 7:

> "Section 19. The style of all ordinances shall be: 'it is hereby ordained by the people of the City of Detroit,' No ordinance shall be revised, altered or amended by reference to its title only, but the section or sections of the ordinance altered or amended shall be re-enacted and published at length."

The Detroit City Railway ordinance was limited to 30 years from and after the date of its passage. (Record, p. 30.) The same is true of the Fort Wayne and Elmwood ordinance, adopted January 31, 1865. Sec. 20, p. 73, Record. Likewise, the Grand River Street Railway ordinance, adopted May 1, 1868, Sec. 19. Record, p. 56. In the ordinance adopted November 24, 1879, (Record, p. 35) entitled:

> "An ordinance supplementary to an ordinance, entitled: 'An ordinance permitting certain persons to establish and locate railways in the City of Detroit,' approved November 24, 1862, and amendments thereto and for other purposes." Section 5 contains the following provision:

> "Section 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to 30 years from date."

In identically the same language the Fort Wayne and Elmwood ordinance was extended in the supplementary ordinance of June 30, 1880, and the Grand River Street Railway ordinance by a like ordinance approved December 3, 1885. Record, p. 58. My contention was and is that

this language is an alteration and amendment of the original ordinances, and that the method pursued violates that provision of the Charter, the legislative rule laid down in Section 19, that:

> "No ordinance shall be revised, altered or amended by reference to its title only, but the section or sections of the ordinance altered or amended shall be re-enacted and published at length."

This contention is entirely ignored in the opinion. Justice to myself and to the Court impels me to call attention to it. Section 25 of Article 4, of the Constitution of Michigan contains the same provision substantially. This contention is again referred to at page 23 of my reply brief. The reason of the adoption of the constitutional and statutory provision requiring re-enactment and re-publication is plainly stated in People vs. Mahaney, 13 Mich., at page 497. Mr. Justice Cooley, speaking for the Court, said:

> "The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phase for another in an act or section which was only referred to but not re-published, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that form for that express purpose. Endless confusion was thus introduced into the law, and the Constitution wisely prohibited such legislation. But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent."

This language was reiterated in Mok vs. Detroit B. & S. Association, 30 Mich., 511, where Judge Cooley said at page 529:

> "What has been attempted here is, to duplicate an act, but at the same time to accommodate it by indirect amendments to a new class of cases, is disregard of the constitutional provision which re-

> quires *each act of legislation to be complete in itself*, and forbids the enactment of fragments which are incapable of having effect or of being understood until fitted into other acts, after by construction or otherwise, places have been made for them. No such legislation can be sustained."

Again in Burton vs. Schildbach, 45 Mich., 504, at page 508, Judge Cooley said:

> "*The defect in the act was found to be that it was not complete and sufficient* in itself to permit of incorporations under it, and that it undertook to accomplish the purpose by reference to an indirect and blind amendment of a previous statute, whereas the Constitution requires that all amendments of *statutes shall present the provisions in full as amended*."

Standing alone and by themselves the so-called extension ordinances are meaningless. It is only by reference to the previous ordinances that we can ascertain what was referred to. They undertake to carry forward for a period of 30 years the entire provisions of the previous ordinances without re-enactment and without re-publication. The extension ordinances are not complete in themselves and hence, in the language of Judge Cooley, "No such legislation can be sustained." They violate the express language of the legislative provision contained in the Charter of the City of Detroit, "that no ordinance shall be revised, altered or amended by reference to its title only, but the section or sections amended shall be re-enacted and re-published at length."

How then can these extension ordinances be sustained as valid enactments operating as they do as an indirect amendment and alteration of the terms by changing the limit of their duration without violating the statutory provision quoted

So I repeat, the opinion nullifies the legislative act intended to prevent improvident legislation of this character.

The extension ordinance of November 14, 1879, was questioned in Detroit Citizens' Street Railway Company vs. Detroit, 64 Fed., 628. The question there mooted was the power of the Common Council in 1879 to grant a franchise extending beyond the life time of the corporation to which it was granted. That question is not involved here. The Grand River Street Railway and the Fort Wayne &

Elmwood extension ordinances were not involved in that litigation. They had not expired at the time such litigation was begun. The point I make in this case concerning the validity of these ordinances was not raised in the case in 64th Federal, though it might have been, and whatever effect the decision in that case may have been to the Detroit City Railway ordinance of 1879, it cannot affect the Fort Wayne & Elmwood and the Grand River Street Railway ordinances because they were not involved in the controversy.

This Court in Cromwell vs. Sac County, 94 U. S., 351, at page 353, held that, "where a second action between same parties is upon a different demand, that a prior judgment operates as an estoppel only as to matters in issue or points controverted upon, which such demand was based." Mr. Justice Field said:

> "In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matter arising in a suit upon different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

And Judge Taft, in City of Detroit vs. Detroit Railway, 56 Fed., 893, in passing upon the validity of the Detroit Railway extension, held that the city was not concluded by a judgment sustaining that part of the ordinance fixing tax rate for the extended period. If the doctrine of estoppel is to be applied at all, it can only extend to the Detroit City Railway ordinance and cannot affect the Fort Wayne & Elmwood or the Grand River ordinance, because it was only the Detroit City Railway ordinance that was litigated in the former controversy, hence, the rule followed by this Court in Chance Mining Company vs. Tyler Mining Company, 157 U. S., 687, holding decree as to priority of location on part of mining claim not conclusive as to the rest. Mr. Justice Brewer said: "The law in respect to estoppel by judgment is well settled, and the only difficulty lies in the application of the law to the facts. The particular matter in controversy in the adverse suit was the triangular piece of ground, which is not the matter of dis-

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To the contention that the city should be held estopped because the railway company in apparent reliance upon the validity of these extension ordinances has expended large sums of money, I readily grant that at first blush such claim appeals strongly to the conscience, and if we were dealing with an arrangement between private parties, each acting in relation to their own interests, or if the investment had been made for the benefit of the city, I would readily concede the force of the contention, but we are dealing here with a question of power.

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And this Court in Hamilton Gas, Light and Coke Co. vs. City of Hamilton, 146 U. S., 258, in answer to the same contention there made, said:

> "It may be that the stockholdres of the plaintiff supposed at the time it became incorporated and when they made their original investment that the city would never do what evidently it contemplated by the ordinance of 1889. . . . It is one of the contingencies to which parties look now in making a large class of contracts, that they may be affected in many ways by State and National legislation."

I respectfully submit that it should be decreed that the City of Detroit possesses the power to pass the amendatory ordinances.

III.

The learned writer of the opinion after assuming from fallacious premises that the Legislature had power to authorize the making of an irrevocable ordinance by the city, asserts on page 12 that these agreements had express legislative authority, not only under the tram railway act, but also and particularly under the street railway act of 1867.

By the twentieth section of the latter act it was provided that "the rates of toll or fare, which any street railway may charge for the transportation of persons or passengers over its road, should be established by agreement between the company and the corporate authorities of the city or village where the road is located, and should not be increased without the consent of such authorities," and asserts that the tram railway corporations were brought within the provisions of the street railway act perforce of Section 29 of said last named act. By placing a construction upon the language employed in the twentieth section of the street railway act, that the rates of fare should be established by agreement and that that language was sufficient to imply an agreement not only as to the rate of fare at the time the rates were established, but during all such time as the city and railway authorities might agree that the rate thus established should remain, it strikes me is a radical departure from the principles that have many times heretofore been ennunciated on this subject by this Court. In the Railroad Commission case, 116 U. S., 307, Chief Justice Waite said in speaking of the power of regulation of rates:

> "This power of regulation is a power of government, continuing in its nature, and if it can be bargained away at all, it can only be by words of positive grant, or something which is in law equivalent. If there is reasonable doubt, it must be resolved in favor of the existence of the power. In the words of Chief Justice Marshall, in Providence Bank vs. Billings, 4 Pet., 514, 'its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear.' This rule is elementary, and the cases in our reports where it has been applied and considered are numerous.

Again, this Court in Detroit Citizens' Street Railway Company vs. Detroit Railway, 171 U. S., 48, in speaking of the ordinance of November 24, 1862, the same ordinance involved in the case at bar, said:

> "It is clear that the statute did not explicitly and directly confer the power on the municipality to grant an exclusive privilege to occupy its streets for railway purposes. It is urged, however, that such power is to be inferred from the provision which requires the consent of the municipal authorities to the construction of a railway under such terms as they may prescribe, combined with the provisions of the Constitution, which, if they do not confer a power independent of the Legislature, strongly provide for and intend local government. The argument is strong and all of its strength has been presented and is appreciated, but there exist considerations of countervailing and superior strength. That such power must be given in language explicit and express, or necessarily to be implied from other powers, is now firmly fixed. There were many reasons which urged to this—reasons which flow from the nature of the municipal trust —even from the nature of the legislative trust, and those which, without the clearest intention explicitly declared, insistently forbid that the future should be committed and bound by the conditions of the present time and functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges. The rule and the reason for it are expressed in:

Minturn vs. Larue, 64 U. S., 23 How., 436 (16:575).

Wright vs. Nagle, 101 U. S., 791, (25:921).

State (Atty. Gen.) vs. Cincinnati Gas, Light and Coke Co., 18 Ohio St., 262.

Parkhurst vs. City of Salem, (Parkhurst vs. Capital City R. Co., 23 Or., 471; 32 Pac. 304.

Saginaw Gas Light Co. vs. Saginaw, 28 Fed., 529, decided by Mr. Justice Brown of this Court.

Long vs. Duluth, (49 Minn., 280), 51 N. W., 913.

See also:

Grand Rapids Elec. Light & Power Co. vs. Grand Rapids Edison E. L. & Fuel Gas Co., 33 Fed., 659, opinion delivered by Mr. Justice Jackson, at Circuit.

As bearing on the rule, see also:

Oregon Railway & Nav. Co. vs. Oregonian Railway Co., 130 U. S., 1, (32:827).

Central Trans. Co. vs. Pullman's Palace Car Co., 139 U. S., 24, (35:55).

The power therefore must be granted in express words or necessarily be implied. What does the latter mean?

Mr. Justice Jackson, in Grand Rapids Electric Light & Power Co. vs. Grand Rapids, Edison E. L. & Fuel Co., supra, says:

> "That municipal corporations ..... possess and can exercise only such powers as are 'granted in express words, or those necessarily or fairly implied in or incident to the powers expressly conferred or those essentials to the declared objects and purposes of the corporation, not simply convenient,

> but indispensable.'" The italics are his. This would make "necessarily implied" mean "inevitably implied." The Court of Appeals of the Sixth Circuit by Circuit Judge Lurton, adopts Lord Harwicke's explanation, quoted by Lord Eldon in Wilkinson vs. Adam, 1 Ves. & B. 466 that a "necessary implication means, not natural necessity, but so strong a probability of intention, that an intention contrary to that, which is imputed to the testator (the party using the language) cannot be supposed." If this be more than expressing by circumlocution an inevtiable necessity, we need not stop to remark; or if it means less, to sanction it, because we think that the statute of Michigan, tested by it, does not confer on the Common Council of Detroit the power it attempted to exercise in the ordinance of 1862."

Does the language of Section 20 that the rates of fare shall be established by agreement inevitably imply that the rates once established shall remain for 30 years or 100 years, or does it mean that the rates in the first instance shall be established by agreement and that thereafter that they may be altered as the changing conditions and the public welfare may from time to time demand, except that such rates could not be increased without the consent of the municipal authorities?

Does not the language of this Court in the case in 171 U. S., 48, just quoted apply with equal force here?

> "There are many reasons which urged to this—reasons which flow from the nature of the municipal trust—even from the nature of the legislative trust, and those which without the clearest intention explicitly declared, insistently forbid that the future should be committed and bound by the conditions of the present time and the functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges, (irrevocable privileges.)"

Tested by Lord Harwicke's rule, the rule of this Court as enunciated in the above case, the recent opinion in this case cannot be sustained.

What is to be said of the opinions of this Court in the recent Illinois Water Works cases? In Freeport Water Company vs. City of Freeport, 21 Sup. Ct. Rep., 493, the title of the act under which the ordinances in question were passed was:

> "An act to enable cities and village to *contract* for a supply of water for public use, and to levy and collect the tax to pay for water so supplied."
>
> "Sec. 1. That in all cities and villages where water works may hereafter be constructed by an incorporated company, the city or village authorities in such cities and villages *may contract* with such incorporated company for the supply of water for public use, for a period not exceeding thirty years." The authorities of Freeport adopted an ordinance thereunder. Section 2, after providing for the use of streets, etc., recites that: "All the rights and liabilities provided for in this ordinance shall continue for a period of thirty years unless sooner extinguished by purchase." Section 7 provided for the payment of a fixed sum as annual rental for hydrants . . . "and shall continue for the full term specified in this ordinance, unless the said city shall sooner become the owner of said water works."
>
> Section 13 declared that the ordinance shall become binding as a contract upon the written acceptance thereof by the grantee . . . and this ordinance, when so accepted, shall not be altered, amended or changed in any way without the concurrence or consent of both parties thereto and interested therein or their successors or assigns."

The authorities within the period limited amended such ordinance and fixed lower rates. The power to do so was questioned. The majority of this Court said:

"The statutes are certainly ambiguous, and in resolving the ambiguity in favor of the public, the Court applied the rule declared in many cases," and adopted the language of Chief Justice Waite in the Railroad Commission cases above quoted.

Your Honor said the question is whether the power given to the municipalities of the State shall be continuing or occasional, indeed only special in its purpose, intended to

have but one exercise, and then bound in contract for thirty years. *If the latter had been the intention it would have been natural to express it.*" Apply this language to Section 20 of the Street Railway Act of 1867. The language there is, "the rates of fare shall be established by agreement." In the Illinois statute the city or village authorities may contract. Do your Honors now think there is a narrower or different signification to the word "agreement" *than was then attached* to the word "contract?" The Illinois statute contained the words, "may contract for a period not exceeding thirty years." The Michigan statute, "shall establish by agreement," but no reference whatever is made to the time such agreement should continue. M ay I not quote from your honor's language in that case again and say, "*that if it had been the legislative intent to contract for thirty years or any other period of time, it would have been natural to express it.*" Your honors in the Freeport case said further: "There is no explicit provision for repetitions of the power,—none declaring the power conferred a continuing one. Who now doubts that it is?"

In the Tram Railway Act under which these companies were organized and under which these ordinances were granted, they were to be subject to such regulations as the municipal authorities might "from time to time prescribe." In section 20 of the Street Railway Act they shall simply be established "by agreement." Permit me to quote your Honor's language again as applicable to this case: "There are no explicit provisions for repetitions of the power—none declaring the power conferred a continuing one. Who now doubts that it is?" Your conclusion in that case was that the powers conferred by the statutes of 1872 can, without straining, be construed as distributive. Cannot section 20 of the Street Railway Act without straining be construed as distributive? In Illinois the City Council was authorized to contract with any person or corporation to construct and maintain water works "at such rates as may be fixed by ordinance, and for a period not exceeding thirty years." Your Honors said: "The words, 'fixed by ordinance,' may be construed to mean by ordinance once for all to endure during the whole period of thirty years; or by ordinance from time to time as might be deemed necessary. Of the two constructions that must be adopted which is the most favorable to the public, not that one which would so tie the hands of the council, that the rates could not be adjusted as justice to both parties might require at a particular time."

"Fixed by ordinance," or "established by agreement," do they not both mean the same thing? Is one interpretation to be applied to the Illinois law and another to the Michigan law? One interpretation to water works and another to street railways? Surely less ambiguity exists in the Michigan statute than in the Illinois statute. If there is no express authority to contract for any period of time, may we not well then ask this Court to apply the rule followed in that case, that, "of the two constructions that must be adopted, which is the most favorable to the public, not that one which would tie the hands of the council, that the rates could not be adjusted as justice to both parties might require at a particlar time."

I am content to be governed by the rule laid down by the minority of this Court in the dissenting opinion of Mr. Justice White. He said:

> "It is unquestioned also that where a right asserted, if enforced will put a contractual limitation upon the power of the law-making authority of the State, presumably to be exercised for the public benefit, the doubt is to be resolved in favor of the continued existence of the law-making power. In other words, that no contract limitation on the powers of government can be upheld by mere implication, or sustained if there be doubt on the subject. The existence of such a contract relation must arise clearly and by express intendment."

Again in Rogers Park vs. Fergus, 21 Sup. Ct. Rep., 490, Mr. Justice Waite said:

> "Of course it is conceded under the rule of construction set by me in my dissent in the Freeport case, that if doubt arose from an analysis of the provisions of the contract, that doubt must be solved against the water company in favor of the municipality."

If the opinion handed down in this case on the 4th inst. is to be adhered to, is the bar of the country to understand that this Court has abandoned the principles herein recited and which have guided it in its deliberations for nearly a century? Are we to understand that in States like Michigan where we have planted an anchor of safety

in our fundamental law and carefully limited the powers of legislation and prohibited the enactment of irrepealable or unalterable legislation, that such provisions are to be nullified and swept aside and held for naught whenever a subservient Legislature or obedient council may be induced to enter into contracts to barter away legislative functions? Are we to be told that a legislative act intended as a guide and protection counts for nothing and that our common council may alter, and amend ordinances by mere reference and without re-enactment or re-publication? Are we to understand hereafter that whenever doubts arise concerning the construction of an ordinance or a statute that such doubts are to be construed against the public instead of in its favor?

On the last page of the opinion I find language that is equally incomprehensible. The opinion says:

> "It cannot be supposed for one moment, with regard to a right so fundamental in its nature, that there was any intention to permit the common council in its discretion to thereafter make an alteration which might be fatal to the pecuniary success of the company."

This Court has so often held that the State may regulate rates and fares that we had supposed this contention practically settled.

Nothing decided since Mun vs. Illinois, 94 U. S., 113, has tended to weaken the conclusion therein announced as to the classes of property which may be deemed affected by a public use nor as to the authority of the public to regulate such use by preventing unjust discrimination, nor by prescribing maximum rates of charges which may be collected for services rendered by persons or property employed in such use.

In Smythe vs. Aimes, 169 U. S., 521, this Court said, it cannot be doubted that the making of rates for transportation by railroad corporation along a public highway between points wholly within the limits of the State is a subject primarily within the control of State, and it ought not to be supposed that Congress intended that so long as it forebore to establish rates that the Union Pacific railroad, the corporation itself, could fix such rates for transportation as it saw proper, independently of the

rights of the States through which the road was constructed to provide regulation for transportation beginning and ending within their respective limits. It was always the law that the rates of charges should be reasonable, now if the authorities may by proper means fix rates, its action is presumed to be just.

This Court held in Regan vs. Farmers, Etc., Co., 154 U. S., 362, that the Railroad Commissioners' schedule of rates is at least prima facie evidence of what is reasonable. This was approved in Santiago Land Co. vs. National City, 174 U. S., 754, where your Honors held that the judiciary should not interfere unless rates are so palpably unreasonable as to render enforcement deprivation of property. But the rates when fixed by legislative action have been considered as dependent for their validity upon their reasonableness and this has been the controlling inquiry.

St. Louis Etc. R. R. Co. vs. Gill, 156 U. S., 649.

Covington, Etc. Co. vs. Sanford, 164 U. S., 578.

Smythe vs. Aimes, 169 U. S., 466.

What room is there then for the fear expressed in the opinion that the rates fixed by the common council might be fatal to the pecuniary success of the company? How can the pecuniary success of the company be imperiled by fixing a reasonable rate? We understand that the right to fix rates is subject to this limitation. That we must give the railway company a reasonable return upon its investment. And in this case your Honor's attention is called to the fact that the railway company do not attack the validity of this ordinance because the rate fixed is unreasonable. This Court has unfortunately raised a question which the railway company dared not raise. It has limited itself to questioning the power to fix any rate. Under the decisions of this Court the rates fixed by this ordinance are reasonable and hence cannot be fatal to the pecuniary success of the company.

Wherefore, upon the foregoing grounds these complainants and petitioners respectfully pray this honorable Court to grant to it a re-hearing of said cause.

TIMOTHY E. TARSNEY,
Attorney for Petitioners and Appellants.

I, Timothy E. Tarsney, of counsel for the appellants and petitioners do hereby certify that in my judgment, the foregoing petition for a re-hearing is well founded and that the same is not interposed for delay.

TIMOTHY E. TARSNEY,
Attorney for Petitioners and Appellant.

No. 152.

Brf. of Brennan & Donnelly for Appellee (on m

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Filed Feb. 25, 1901.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

THE CITY OF DETROIT et al.
Appellant,
vs.
DETROIT CITIZENS' STREET RAILWAY CO.,
Appellee.

BRIEF FOR APPELLEE ON MOTION OF APPELLANT TO ADVANCE CASE.

M. BRENNAN and
JOHN C. DONNELLY,
Counsel of Appellee.

Supreme Court of the United States

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor.
CHARLES FLOWERS, Corporation Counsel.
Appellants.

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY.
Appellee.

Appeal from United States Circuit Court, Eastern District of Michigan. In Equity.

Docket No. 412. October Term. 1900.

MEMORANDUM BRIEF FOR APPELLEE ON MOTION TO ADVANCE.

This case involves the question of the power of the Common Council of the City of Detroit, by a municipal ordinance adopted by that body, to reduce the rates of fare for the carriage of passengers on the street railway lines in the City of Detroit, from the rate fixed by the original grants and contracts at various times entered into between the city and the different companies, and to so reduce the same against the protest, and without the consent of the companies. The original grants and contracts were made as follows:

1. That with the Detroit City Railway, on November 24th, 1862, which provides as follows: "The rate of fare for any distance shall not exceed 5 cents on any one car, or on any one route named in this ordinance except as cars or carriages shall be chartered for specific purposes, provided that cars so chartered shall not be considered regular cars within the meaning of the preceding section." This grant was subsequently extended so that the same was in all respects in full force in August, 1899, when the attempt was made to change the rate of fare.

2. With the Grand River Street Railway of May 1st, 1868, which provides as follows: "The rate of fare for any distance shall not exceed 5 cents on any one car, or on any one route

named in this ordinance." An additional grant to that company on June 27th, 1885, covering the original route, and one additional one provided, "The rate of fare over such route shall be 5 cents," and a subsequent grant over same route, to the same company, for another route, as a part of its system, provides, "Said company is required to file a stipulation or agreement in writing, by the terms of which, it may carry on its cars, passengers, from the westerly terminus, on its line on Myrtle street and Grand River avenue, to the northerly terminus on its line, on Crawford street, on any point on any of its said lines, and any point on Congress street, east, or to the terminus thereof, for a single fare of 5 cents, for any continuous trip, and further fixed the fare for a continuous trip to any other point on its line "for a single fare of 5 cents for one continuous trip."

3. By ordinance of June 13th, 1873, with the Detroit & Grand Trunk Junction Street Railway Company, which provides, "Passengers conveyed upon such railway, in said city, shall be charged no more than 5 cents for any distance."

4. Ordinance of June 16th, 1875, authorized the Central Market, Cass Avenue & Third Street to construct a railway on certain routes and provide: "Passengers conveyed on said railway, in said city, shall be charged no more than 5 cents for any distance."

The Detroit & Elmwood Railway Company, in 1865, was given a grant in which it was authorized to charge a rate of fare not exceeding 5 cents, being almost literally like those already quoted.

All of the provisions above referred to, and others of like import, contained in grants of subsidiary lines together with certain provisions of the statutory law of Michigan, touching the question, are quoted with great particularity and fullness in the opinion of the learned District Judge who decided the case below, a printed copy of which opinion is filed herewith, for the information of this Court. The grants containing the provisions referred to were all in force and effect on the 16th of August, 1899, when the Common Council adopted ordinances as to all of the lines and grants in question, which required the companies to sell tickets at the rate of 8 for 25 cents, and to give universal transfers thereon, thus reducing the rate of fare in two particulars, viz.: passengers were entitled to ride any distance at the rate of 8 for 25 cents, instead of 5 cents as fixed by the original agreements, and further requiring the companies to transfer a passenger demanding such accommodation, to any other line or ruote in the city, upon which transfer he would be entitled to a free ride, or to a ride over both routes, for a single fare at the rate

of 8 tickets for twenty-five cents, which was not required of the different companies under the original grants. The original grants were all accepted by the various companies, and under the well settled rule, established contractual relations between the city and the company.

The city claims the power to reduce the fares by virtue of its charter, adopted in 1893 after grants were made, and also by the terms of the street and tram railway acts under which the original grants were made, claiming that by virtue thereof the city had the authority to regulate from time to time the rates of fare without the consent of the companies. These claims were denied by the company, which claimed that the ordinance of Aug. 16, 1899, reducing rates of fare and requiring free transfers operated to impair the contracts contained in the original grants. These various questions are set out and discussed with great fullness in the opinion of the learned District Judge. While we are impressed with the importance of the case, both in its practical effect, and in the principle of legislative authority and constitutional law involved, we are not satisfied that the case is one coming within the rule upon the question of advancing cases for argument on the docket. The case is of undoubted importance to the street railway companies of the country, because if the Legislature of Michigan has, by express or implied authority, conferred upon the municipality the extraordinary power claimed by it in this case, and such power is not restricted by constitutional limitations, the street railways of the country are in a most precarious and hazardous condition, and the immense capital invested therein is more or less menaced. Certainly such a condition is one wholly at variance with what has been the heretofore accepted view of the binding character of this class of contracts. It is to be noted that many of the grants sought to be effected, are of many years' standing, and according to the claim of the city, some of the most important of them expire by lapse of time, within a few years. There is no sudden crisis or emergency, calling for prompt action. The conditions which existed on August 16th, 1899, had existed for nearly 40 years.

It is respectfully submitted that a case is not made out for the application of the rule providing for the advancement of the cause on the docket, but if the Court should think otherwise, it is respectfully suggested that the argument be put for as late a day in the term as the business of the Court will permit, as considerable time is necessary to prepare for the argument.

M. BRENNAN and
JOHN C. DONNELLY,
Counsel for Appellee.

DETROIT:
Record Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1901.

The Circuit Court of the United States,

FOR THE EASTERN DISTRICT OF MICHIGAN,

SOUTHERN DIVISION.

In Equity.

THE DETROIT CITIZENS STREET RAILWAY COMPANY,

vs.

THE CITY OF DETROIT, et al.

OPINION.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

H. M. DUFFIELD and
FRED A. BAKER,
Of Counsel.

DETROIT:
Record Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1900.

The Circuit Court of the United States,

FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

In Equity.

THE DETROIT CITIZENS STREET RAILWAY COMPANY.

vs.

THE CITY OF DETROIT, et al.

Messrs. Brennan, Donnelly & Van De Mark, John C. Donnelly, Henry M. Duffield and Fred A. Baker, for complainant.

Charles Flowers, T. E. Tarsney and Jasper C. Gates, for defendants.

Swan, J.:

The complainant in this cause is a street railway corporation, organized in September, 1891, under an Act of the Legislature of Michigan approved March 5, 1867, entitled: "An Act to provide for the formation of street railway companies" (Chapt. 95, Howell's Ann. Stats. of Mich.), Sections 13, 14 and 20 of the act provide as follows:

> "Sec. 13. Any street railway corporation organized under the provisions of this act may, with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct,

use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent, but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township."

"Sec. 14. After any such village or township shall have consented as in this act provided, to the construction and maintenance of any street railways therein or granted any rights and privileges to any such company and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred."

"Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road shall be established by agreement between such companies and the co-operation of the authorities of the city, or village where the road is located and shall not be increased without the consent of such authorities."

The bill charges the violation by the defendant of the rights acquired by complainant and its predecessors and assignors under the Acts of 1855 and 1867. A brief recital of the rights and privileges accorded to these several lines of street railway, is necessary.

November 24, 1862, the City of Detroit entered into a contract with Eben N. Wilcox and his associates, successors and assigns, whereby said Wilcox and his associates organized into a corporation under the Train Railway Law (Chap. 94, Howell's Ann. Stats. of Michigan), and were authorized and empowered to construct, equip and maintain and use single or double track railways with all necessary and convenient tracks, etc., in, along and through certain streets, avenues and public places in the City of Detroit and to operate thereon, railway cars and carriages. This contract was adopted by the Common Council in the form of an ordinance, which was accepted by the grantees therein named, who were duly organized into a corporation by the name of the "Detroit City Railway." The grantee duly accepted said ordinance, performed all the terms and conditions thereof and constructed and put in operation the railway thereby authorized, and has since maintained and operated thereunder, lines of street railway upon Jefferson, Woodward, Gratiot and Michigan avenues in the City of Detroit. Amendatory and supplemental ordinances granted to said Detroit City Railway, like rights and privileges in other streets and avenues upon which lines of railway were constructed and have ever since been operated under the terms of said original and supplementary ordinances. These latter lines were built and operated on Brush, Trumbull, Chene, East Fort and other streets in the city. The ordinance of November 24, 1862, provided in Section 23 thereof, as follows:

> "The rate of fare for any distance, shall not exceed five cents on any one car or on any one route named in this ordinance except where cars or carriages shall be chartered for specific purposes, provided that cars so chartered shall not be considered regular cars within the meaning of the preceding section."

By Section 5 of said ordinance it was provided that:

> "The routes of all said railways shall commence in the Woodward avenue road at the Campus Martius, from thence running on their several courses to the outer limits of the city; Provided, that in collecting fares those portions between Atwater through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue and between Brush and Beaubien or Third streets on Jefferson avenue and Woodbridge streets, shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, shall pay only one fare."

That is that the lines of each of said avenues, to-wit: Jefferson, Gratiot, Michigan and Woodward avenues should each be considered a separate route. The lines on Brush street and Trumbull avenue were maintained and operated each as a separate route, and it is the claim of complainant that under said ordinance, the Detroit City Railway Company and complainant, as its grantee and successor, became entitled to exact and collect from each passenger taking passage on any one of the routes named, the full fare of five cents for a single ride in any direction from any portion of the road on which he took passage, and such passenger was not entitled to have or receive from the railway company in consideration of his payment of said fare of five cents, any transfer ticket or other contract or have the right to a free ride over any one of the other routes of the company or to a ride over more than a portion of any one of said routes or to be transferred to or carried over any portion of any other route without the payment of additional fare. By an ordinance of the City of Detroit, approved January 3, 1889, and duly accepted by the Detroit City Railway Company, authority was given to said company to construct and operate lines of street railway

in, along and through Fort street east, Mack street, Chene street and Cass avenue and to connect its lines on Michigan avenue with the Monroe and Gratiot avenue lines. All of these several lines, excepting that on Cass avenue, have been constructed and are now owned and operated by complainant under ordinances of the City of Detroit accepted in writing by the complainant and its predecessors.

By Section 4 of said ordinance of January 3, 1889, it was enacted that:

> "Sec. 4. The above mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit City Railway, but the permission and authority hereby given shall be inoperative and void unless the said Detroit Railway shall file a written acceptance thereof within thirty days from the date of the pasage of this ordinance in which the said company shall agree to do and perform the following with reference thereto:
>
> (a) It shall carry passengers over its Cass avenue and Third street, Trumbull avenue and Michigan avenue and Congress and Baker street lines to any point on the proposed line on Fort street east or the easterly terminus thereof for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east or from any point thereon to any point on Congress and Baker streets, Michigan avenue, Trumbull avenue and Cass avenue and other street lines for a single fare of five cents for one continuous trip."

Other lines of railway had been constructed from time to time and put in operation by complainant's predecessors in ownership under the authority of the Common Council, all of which with those above named have been acquired and are operated by the complainant. The ordinances which authorized the several lines have been amended by the joint action and consent of the Common Council and the railway companies apparently in consideration of mutual concessions and undertakins of the contracting par-

ties. The principal changes effected by these amendments were the privilege of transfer over various lines to a passenger paying a single fare of five cents and the company's consent to sell eight workingmen's tickets, so-called, good during specified hours, for twenty-five cents. Aside from these modifications which were prices paid by the railway companies for extensions and changes in their lines and extensions of the term of their easements in the streets of the city and other rights and privileges, the rate of fare established by the agreement of the city and the companies was and has been from the first uniformly five cents, which was prescribed by the ordinances and accepted by the grantees as appears in the municipal legislature declaring the terms and conditions on which the city's consent to the use of its streets was granted and accepted by the grantees. These several ordinances contain differences of expression, but none of substance or meaning.

The first ordinance, that of November 24, 1862, by Section 8, provides:

> "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance. * * *"

That of January 31, 1865, to the Fort Street & Elmwood Avenue Railway, the name of which is now the Fort Wayne & Belle Isle Railway Company, by Section 8 provides:

> "The rate of fare for any distance shall not exceed five cents in any one car on said route, etc. * * *"

The ordinance of January 3, 1889, authorizing the Detroit City Railway to construct and operate the street railways designated as the East Fort street line, Chene street line, Cass avenue extension and Mack street line, and to lay double tracks on Jefferson and Gratiot avenues, by Section 4, provides:

> "That the above mentioned lines shall be operated in connection with and as part of the present system of the Detroit City Railway. * * *"

And further:

> "Shall carry passengers from its Cass avenue, Third street, Trumbull avenue, Michigan avenue and Congress and Baker street lines to any point on the proposed line on Fort street east or to the easterly terminus thereof, for a single fare of five cents for one continuous trip,"

and a like fare is prescribed for travel on other of the lines authorized.

The ordinance of May 1, 1868, granting the right to the Grand River Street Railway Company, to construct and operate its street railway in specified streets of the city, by Section 6, provided:

> "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance, except, etc. * * *"

June 27, 1885, the Common Council, by ordinance of that date, authorized the Grand River Street Railway Company to construct and operate a railway track, etc., on Myrtle street, which ordinance, by Section 2, defined the limits of the railway, and declared:

> "The rate of fare over such route shall be five cents."

January 3, 1889, the Common Council passed an ordinance authorizing the Grand River Street Railway Company to construct the Crawford street and East Congress street lines, and by Section 3 thereof, the Grand River Street Railway Company was required:

> "To file a stipulation or agreement in writing by the terms of which it shall agree to carry passengers from the westerly terminus of its line on Myrtle street and Grand River avenue, to the northerly ter-

> minus of its line on Crawford street on any point on any of its said lines to any point on its line on Congress street east, or to the terminus thereof, for a single fare of five cents for one continuous trip."

and also fixed the fare for a continuous trip to any other point on its lines:

> "For a single fare of five cents for one continuous trip."

This ordinance also required the grantee to issue and sell tickets at the rate of eight tickets for twenty-five cents to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way, between specified hours of the morning and afternoon.

The ordinance approved October 14, 1892, authorizing the Detroit Citizens' Street Railway Company to construct and operate additional tracks on Griswold, Woodward and Atwater streets as part of the system of railways authorized by the ordinance approved May 1, 1868, practically fixed the same rate of fare by requiring these railways to be operated as part of the Grand River avenue system.

The ordinance of June 13, 1873, empowered the Detroit & Grand Trunk Junction Street Railway Company to construct and operate its railway over Mt. Elliott avenue, through Congress and other streets to the westerly limits of the city, and by Section 12 enacted that:

> "Passengers conveyed upon said railway in said city, shall be charged no more than five cents for any distance."

The rights granted under this last ordinance were, prior to July 14, 1879, assigned to the Congress & Baker Street Railway Companies.

The ordinance of June 16, 1875, authorized the Central Market, Cass Avenue & Third Street Railway to construct

and operate its railway from Jefferson avenue through specified streets to the Holden road, and also upon other streets in the city. Section 12 provided:

> "Passengers conveyed upon said railway in said city be charged no more than five cents for any distance."

The grantee assigned its rights and property to the Cass Avenue Railway Company prior to November 14, 1879, and the latter company, June 22, 1882, transferred the same to the Detroit City Railway Company.

The ordinance of April 17, 1886, authorized the construction and operation of the Dix Avenue Railway and by Section 6 provided:

> "The rate of fare for a single trip, shall not exceed five cents for any distance within the city limits."

The Highland Park Railway was authorized by the ordinance of July 13, 1886, to construct and operate a track along Woodward avenue between the railroad crossing and the northerly city limits, and by Section 5, it was provided:

> "The rate of fare for a single trip, shall not exceed five cents for any distance within the city limits."

By the ordinance of July 24, 1886, the Fort Wayne & Elmwood Railway Company was authorized to construct and operate its railway along Fort street from its intersection with Clark avenue to the intersection of Fort street and the westerly limits. Section 2 of the ordinance enacted:

> "The rate of fare for any distance on said Fort Wayne & Elmwood Railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car, except, etc. * * *"

December 22, 1886, the Common Council passed an ordinance granting the same company the right to construct and operate its railway on Elmwood avenue and East Lafayette street to the Boulevard, declaring the original lines and the extension granted, one railway, and that:

> "Each passenger traveling the same continuously either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall be five cents."

The ordinance of January 3, 1889, authorized the Fort Wayne & Elmwood Street Railway Company to construct and operate its railway upon certain specified streets, additional to its original grant, and declared that the railways thereby authorized, should be deemed one railway, and:

> "Each passenger traveling the same continuously either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall not exceed five cents."

A proviso required the company to issue and sell tickets at the rate of eight for twenty-five cents, to be good for transportation over the entire route of said company during specified hours.

The Detroit Railway was authorized by the ordinance approved December 4, 1894, to construct and operate a street railway upon specified streets and avenues of the city, the grant covering several routes. Section 10 of the ordinance provides:

> "The rate of fare for a single ride for a continuous trip any distance in one direction over any one of the routes hereinbefore described, shall be five cents,"

for which the passenger is entitled to such ride and to a ticket or transfer check good for a ride over any other line

or road operated by said grantees, their associates and assigns, if presented within a certain time.

It also required the grantee to issue and sell packages of eight tickets for twenty-five cents, which tickets would be accepted for fare between certain hours, and entitled the passenger to a transfer for a continuous ride over any other line or route of said grantees.

All these ordinances were accepted in writing by the respective grantees. Other ordinances affecting the street railways were passed by the Council between the time of the grants conferred by the city in 1862 and 1865, and the passage of the ordinances of August 17, 1899, but they contain nothing germane to the question involved in this suit, with three exceptions. On the 14th of November, 1879, the Common Council passed an ordinance making certain requirements from the Detroit City Railway Company, which had become the owner of all the street railways then in operation, excepting the Fort Wayne & Elmwood Railway Company and its extensions and the Grand River Railway Company and its lines. This ordinance was the culmination of many differences which had arisen between the city and the Detroit City Railway Company, notably controversies concerning the taxes payable by the railway companies to the city, and was an adjustment of the relations of the city and the company as to the controverted matters. It exacted of the company the extension of certain of its lines, and that its cars on all lines should be operated as the public convenience might require and the Common Council order. In consideration of the acceptance of this ordinance by the Detroit City Railway Company as a compromise of the differences existing between it and the city, and in view of the expenditure required of the grantee to comply with the demands of the City Council, by Section 5 of the ordinance it was enacted:

> "The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty (30) years from this date."

By Section 6, the ordinance was made to take immediate effect when written acceptance of the terms thereof were filed in the office of the City Clerk of Detroit, by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company and the Central Market, Cass Avenue & Third Street Railway Company or their successors, which two latter corporations had assigned their rights and property to the Detroit City Railway, and:

> "From that date, all ordinances or parts of ordinances in conflict with the provisions hereof, shall stand repealed, and all ordinances and parts of ordinances in any conflict herewith, shall be affirmed and continued in force."

By Section 7, the "right to amend or repeal this ordinance in case of its violation by said company or companies" is expressly reserved. A like ordinance was passed June 30, 1880, giving to the Fort Wayne & Elmwood Street Railway Company (formerly known as the Fort Street & Elmwood Avenue Railway) an extension of the powers and privileges conferred upon it under its original corporate name by the ordinance of January 31, 1865, and the amendments thereof, for thirty years. This ordinance is apparently identical, *mutatis mutandis* with that applicable to the Detroit City Railway above quoted. These ordinances were accepted in writing by the grantees. Both the city and the railway companies assumed that the easement or franchise in the streets by the ordinance of 1862 and 1865 were limited to thirty years. By a similar ordinance approved December 3, 1885:

"The powers and privileges conferred and obligations imposed on the Grand River Street Railway Company by the ordinance passed May 31, 1868, and the amendments thereto, are hereby extended and limited to thirty years from and after the first day of January, A. D. 1886. * * *"

All of the railways named in the bill except the Grand River Railway and the Fort Wayne & Belle Isle Railway Company were acquired by the Detroit City Railway Company, which in September, 1891, sold and conveyed the same, with the rights, easements or franchises belonging thereto, to complainant, which also acquired October 1, 1891, all of the rights and property of the Grand River Railway Company (formerly known as the Grand River Street Railway), and subsequently became the lessee of the rights, privileges and property of the Fort Wayne & Belle Isle Railway Company. Since its acquisition of said several lines as narrated, complainant has lawfully operated and still is so operating the same.

The Detroit City Railway, the Grand River Street Railway and the Fort Street & Elmwood Avenue Railway, as it was first called, were originally incorporated under the Train Railway Act of 1855, Chap. 94 How. Ann. Stats., but these companies and all others involved in this case have since been incorporated under the Street Railway Act of 1867, mentioned hereinafter. The Act of 1855 up to 1861, contained but thirty-two sections and contemplated only the formation of corporations for the construction and operation of train railways upon and over which any person or company might carry freight in their own vehicles paying tolls for the use of the track. It was amended February 2, 1861, by adding Sections 33 and 34 thereto, which read:

"Sec. 33. It shall be competent for parties to organize companies under this act to construct and

operate street railways in and through the streets of any town or city in this State."

"Sec. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them; provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of said town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

March 27, 1867, the act was again amended by adding to Sec. 34, the following, as part of that section, namely:

"Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditons whereby the rights or franchises here granted shall be destroyed or unreasonably impaired or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in said consent or grant named pursuant to the terms thereof."

Section 36, after prescribing what shall be a sufficient designation of the route or routes stated in the Articles of Association of the company, provides as follows:

"It shall be lawful to build, maintain or extend the railway of such company according to the terms and conditions of such grant or grants. * * *"

Sections 41 and 42 were enacted April 12th, 1871. The latter provides that:

"All the provisions of this act as amended, shall be applicable to all corporations now organized under this act as though specifically named."

March 5, 1867, the Street Railway Act of 1867, so-called, was passed. It is entitled, "An Act to provide for the

formation of Street Railway Companies," and prescribes a complete scheme for the organization of such companies, which would seem to have been designed to displace, if not repeal former legislation to that end. Sections 13, 14, 15, 19, 20, 29 and 30 of this act are as follows:

"Sec. 13. Any street railway corporation organized under the provisions of this act, may, with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing, the terms and conditions upon which they are permitted to use said streets. * * *"

"Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so conferred."

"Sec. 19. The common council or other corporate authorities of the city or village in which any street railway shall be located, may from time to time by ordinance or otherwise, establish and prescribe such rules and regulations in regard to said railway as may be required for the grading, paving and repairing of the streets, and the construction of sewers, drains, reservoirs and crossings and the laying of gas and other pipes upon, in and along the

streets traversed by such road and to prevent obstructions thereon."

"Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, shall be established by agreement between such company and the corporate authorities of the city or village where the road is located and shall not be increased without consent of such authorities."

"Sec. 29. All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

"Sec. 30. All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons or passengers in any city or village shall be organized under the provisions of this act and shall be subject to the provisions of Chapter Seventy-three (73) of the Compiled Laws of this State, and to all other general laws of this State relating to corporations so far as the same may be applicable to corporations formed under this act, and the Legislature may alter, amend or repeal this act at any time."

Section 15 authorizes any street railway company to:

"Purchase and acquire either at public or private sale or to hire any street railway company in any city, village or township, owned by any other corporation together with the real and personal estate belonging thereto and the rights, privileges and franchises thereof and to use, maintain and complete such road and use and enjoy the rights, privileges and franchises of such company and upon the same terms as the company whose roads and franchises were so acquired, might have been, etc."

It will be noted that when the original grant to the Detroit City Railway was re-enacted and extended November 14, 1879, and that to the Fort Wayne & Elmwood Railway Company, subsequently called the Fort Wayne & Belle Isle Railway Company, was re-enacted and extended in 1880 and the original grant to the Grand River Street Railway Company was re-enacted and extended in 1885, the provisions of the street railway act, above quoted, were in force and by the express terms thereof, the grantees although incorporated under the Train Railway Act, became entitled to the benefit and protection of all provisions of the Street Railway Act. This is true also of the subsequent grants made by the city to the various railway companies which are the constituents of complainant's system, including also the Fort Wayne & Belle Isle Railway Company, which it holds by lease.

The charter of the City of Detroit, approved June 7, 1883, Sections 121 and 122, clothed the Common Council with power over the streets, highways and alleys, to establish, open, widen, extend, straighten, alter, vacate, etc., and generally to "control, prescribe and regulate the manner in which the highways, streets, avenues, lanes, alleys, public grounds and spaces within said city, shall be used and enjoyed."

Section 19 of the ordinance of November 24, 1862, provides:

> "It is hereby reserved to the Common Council of the City of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railways."

The later ordinances granting consent to railways for the occupancy of the street and extensions of easements previously granted, contained similar provisions.

The statutes and ordinances from which the foregoing quotations have been made, it is believed, comprise all the legislative and municipal enactments invoked by both parties as declaratory of their respective rights and powers.

August 16th, 1899, the Common Council of Detroit passed five ordinances which the Mayor approved, requiring complainant, its successors and assigns and the railway companies named in said ordinances:

> "To keep on sale on its cars in service at all times, tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by such railway company, its successors or assigns, for a single ride for any distance in either direction over all lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented and a passenger presenting such ticket or on the payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route or within fifteen minutes after such passenger leaves the car on which he received said transfer ticket."

The other four ordinances contained a like provision.

It will be seen that these ordinances not only reduced the rate of fare fixed by the original consent ordinances of 1862 and ratified in that of November 14th, 1879, and the other ordinances above recited and which had been recognized as a lawful rate over each separate route or line ever since the street railway service was introduced, but also required complainant to transfer a passenger free of charge over any other of complainant's lines or routes to which he might request a transfer ticket.

It is the claim of complainant that these ordinances violate its agreements with the city, evidenced by the ordinances granting the consent of the city to the use of the

streets by coaplainant, its grantors and predecessors and accepted by the latter as the terms and conditions of the easement granted, and impaired the obligation of its contracts with complainant, its grantors and predecessors, and is null and void. A restraining order was issued, staying the enforcement of the ordinances of August 16th, pending the hearing of a motion for a perpetual injunction. No answer to the bill has been made, but defendant has filed certified copies of the various consent ordinances and the amendments thereto and these copies have been submitted in connection with the charter of the city and the acts of 1855 and 1867 and the amendments thereto as the city's answer to the motion for injunction. Both parties concede the jurisdiction of the Court under the authority of

City Railway Co. vs. Citizens R. R. Co., 166 U. S., 563.

Walla Walla vs. Walla Walla Water Co., 172 U. S., 1.

Hamilton vs. Hamilton Gas Light Co., 146 U. S., 158.

Swan, J.: The controlling question in this case is the effect of the ordinances of consent and their acceptance by the railway companies. These ordinances were enacted under express legislative authority conferred on the city authorities to prescribe the terms and conditions under which an easement in the streets should be granted to street railway companies. The Constitution of Michigan, Section 38 of Article 4, provides:

> "The Legislature may confer upon organized townships, incorporated cities and villages and upon the board of supervisors of the several counties, such powers of a local legislative and administrative character as they may deem proper."

With the two limitations of this broad power, this case has no concern. "Municipal corporations derive their sole

source of power from legislative enactments. * * *" "The power of a municipality to grant an easement in a street to a street railway is not inherent but is derived from the Legislature."

> Street Railway Co. vs. City of Detroit, 110 Mich., 390.
> Detroit Citizens' Street Railway Co. vs. Detroit Railway, 171 U. S., 48.

In the exercise of this constitutional power, the Legislature gave to the city by the acts of 1855 and of 1867, authority to grant or deny to a railway company, the use of its streets for the construction and operation of its railway. The franchise of corporate capacity had been acquired by the railway companies under the laws of the State, and this was all that the Legislature had to bestow. It left the acquisition of the easement in the streets to the action of each municipality from which it was sought, and by making it the subject matter of agreement between the city and the railway company, vested the city with the power to prescribe and the grantee to accept or reject the terms and conditons of consent offered. Both parties had capacity to enter into the contract. The only limitation upon the exercise of that power, was that the State requires that the city's consent should be evidenced by ordinance, and that the acceptance of the railway company, should be in writing. The fact that the early ordinances gave an exclusive right to the grantee has lost significance by the decisions in:

> Street Railway Co. vs. Detroit, 110 Mich., 384, and Detroit Citizens' Street Ry. Co. vs. Detroit Railway, 171 U. S., 48.

The acceptance of the terms and conditions of the city's consent and of the obligations imposed upon, and the reciprocal undertakings given by, the railway company to the city, constitute a sufficient consideration and supply

all the essentials of a contract. It "constitutes a contractual ordinance conferring an easement which is irrevocable."

Mayor of Knoxville vs. Africa C. C. A., 77 F. R., 508.

Township of Hamtramck vs. Rapid Railway, 6 Detroit Legal News, 821.

Iron Mountain R. Co. vs. Memphis, 96 F. R., 128.

Louisville Trust Co. vs. Cincinnati, 76 F. R., 209 (C. C. A.)

Electric Railway Co. vs. Grand Rapids, 84 Mich., 257.

Union St. R. Co. vs. Circuit Judge, 113 Mich., 645-6.

City Railway Co. vs. Citizens' Co., 166 U. S., 567.

The rule which requires a strict construction of the powers of municipal corporations and the equally familiar principle that all public grants must be strictly construed against the grantee, leaving nothing to inference, find no room for application in this case for the grant of authority is explicit and unqualified. The Legislature expressly reserved to itself in the acts of 1855 and 1867, what the Constitution gave it, independent of such reservation, the right to alter, amend or repeal those acts at any time. In the Train Railway Act, the affirmation of this power in Sec. 31 was thus qualified:

> "But such alteration, amendment or repeal shall not operate as an alteration or amendment of the corporate rights of companies formed under it, unless specially named in the act so altering or amending this act. * * *"

The Legislature has not exercised its constitutional or reserved power in any particular affecting this case, except in the enactment of the second proviso to Sec. 34 of the Act of 1855, nor has it delegated, even if it could, the power to the city to modify its consent. On the contrary, by the second proviso of Sec. 34 of the Act of 1855, quoted above,

and Sec. 14 of the Act of 1867, providing that after the consent of a municipality to the use of its streets by a street railway company has been accepted by the latter, "such township, city or village shall not revoke such consent nor deprive the company of the rights and privileges so confererd," it has expressly forbidden any impairment of the grant. The force of this prohibiton is supplemented by Sec. 29 of the same act, giving to street railway companies organized under prior legislation, "the same powers, rights, protection and privileges" and subjecting them "to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

It is plain, therefore, that whatever construction might have been given to Sec. 34 of the Act of 1855 prior to the enactment March 27, 1867, of the second proviso thereto, the inviolability of its consent declared by Sec. 14 of the Act of 1867, was a right and protection acquired under Sec. 29 which could not be nullified by a city ordinance.

People vs. Kirsch, 67 Mich., 539, 543.

In Detroit City Railway vs. Guthart, 51 Mich., 183, construing Sec. 31 of the Train Railway Act referred to supra, Justice Cooley said:

> "The rights intended by that section are the essential and important rights of corporations formed for the particular purposes which the act had in view as distinguished from the privileges and immunities which are not so fundamental, but which may, nevertheless, have value. An attempt to enumerate the rights here would be presumptuous and without value, but, in general terms, it may be said that the franchise to construct and operate a road and to levy and collect remunerative tolls or charges would be corporate rights."

The Acts of 1855 and 1867, being in pari materia, no reason is perceived why this definition of the word "rights"

should not be applied to the same word in Sections 34 of the Act of 1855 and 14 of the Act of 1867.

Reiche vs. Smythe, 13 Wall, 162.

By Section 20 of the Act of 1867, as we have seen, the rate of fare was made matter of agreement between "such company and the corporate authorities of the city or village where the road is located," * * * and, therefore, "when established by agreement," a right vested in the railway company which is protected by Section 29 of the Act of 1867, quoted above, as well as by the Federal Constitution. It is replied to this that Section 34 of the Act of 1855 was added to that act twenty-two days after the Act of 1867 was approved, and must, therefore, be regarded as the latest expression of the legislative will upon this subject; that under the first proviso to that section, prohibiting a railway company from constructing its road in "the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and terms and conditions as said authorities may *from time to time prescribe*," the city was empowered to change the rate of fare. This is not an exact statement of the amendments to Section 34. All that part of the section preceding its second proviso was added April 12th, 1861. The second proviso that:

> "After said consent shall have been given and accepted by the company or corporation to which the same is granted, such authority shall make no regulation or condition whereby the rights or franchises so granted shall be destroyed or unreasonably impaired or such corporation be deprived of the right of constructing, maintaining and operating such railway in the streets in such consent or grant named pursuant to the terms thereof,"

was approved March 27th, 1867. Its clear intent, purpose and effect was to bring the Act of 1855 into harmony with

that of 1867, but primarily and beyond question, to take from the city the authority, if any it had, to prescribe further regulations and conditions, "from time to time," impairing the consent thus granted, and its enjoyment "pursuant to the terms thereof." This is evidenced also by Section 36 of the same Act, also added March 27th, 1867, by which it is provided that:

> "It shall be a sufficient designation of the route or routes thereof (of a street railway) to declare that said railway is to be constructed and maintained in such streets or public ways of the particular city as has been or shall thereafter, from time to time, be granted to said company for that purpose by the proper municipal authorities of such city; and it shall be lawful to build, maintain or extend the railway of such company according to the terms and conditions of such grant or grants." * * *

The Street Railway Act of 1867, entitled: "An Act to provide for the organization of street railway companies," was approved March 5th, 1867. While it does not repeal the Act of 1855, but is in pari materia, yet by its 30th section, quoted supra, it so far displaced it as to require that all street railway companies thereafter formed should be organized under its provisions. This act is complete in itself and in marked contrast with the heterogeneous provisions of the Act of 1855, which, for want of a more suitable statute, was amended to adapt it to objects not within its original scope and purpose. The later act was the product of a more enlightened conception of the character and necessity of the new system of urban passenger transportation and obviously recognized the impolicy and injustice of subjecting the large investments of capital needed for such enterprises, to the caprice of fluctuating municipal bodies. By leaving to the city or village authorities the right to give or withhold consent to the use of its streets by such railways "under such rules, regulations and conditions as

the local authorities might impose," it enabled municipalities to protect themselves by the ordinance of consent, and, by Section 14, secured the protection of the grantee of the servitude by the acceptance of that ordinance as the irrevocable contract of the parties. The justice and necessity of this provision was approved by the same legislature twenty-two days thereafter by adding the second proviso to Section 34 of the Act of 1855, which, differing in phraseology, is identical in purpose and effect with Section 14 of the later act, and, as has been said, was doubtless enacted to harmonize the two acts, the latter of which was made the only basis for the organization of street railway companies thereafter. The second proviso of Section 34 is, therefore, clearly in confirmation and adoption of the spirit and purpose of Sections 14 and 29 of the Act of 1867, not in the least degree detracting from the absolute interdict of Section 14 against the revocation of the consent granted. It does not profess to amend or repeal any part of the Act of 1867 or to qualify the rights it granted or the liabilities it imposed.

This conclusion is confirmed by the fact that the amendment of 1867 to Section 34 of the Act of 1855, was made by proviso, "the general purpose of which is to except the clause covered by it from the general provisions of a statute or some provisions of it, or to qualify the operation of the statute in some particular."

George Banking Co. vs. Smith, 126 U. S., 181; or, as said in Wyman vs. Southard, 10 Wheat., 1, 30:

> "The proviso is generally intended to restrain the enacting clause and to except something which would otherwise have been within it, or in some measure to modify the enacting clause."

Both provisos to Section 34 were evidently made with this intent. The first modified the broad grant of authority to street railway companies to use and operate street

railways by making the consent of the city or village under such regulations, terms and conditions as its authorities might "*from time to time prescribe*" a condition precedent to the use and operation of such railways in the streets of a municipality. The second proviso modified all that preceded it in the section by prohibiting impairment of the rights and franchises named in the accepted grant, or deprivation of the right of constructing, maintaining and operating such railway in the streets in the consent named, "pursuant to the terms thereof" (of the consent). Prior to the enactment of the second proviso the city had never exercised or claimed the power to vary its consent in any degree or particular. That it was competent for the Legislature to withdraw from the city the apparent authority to prescribe further terms and conditions to its consent "from time to time" is unquestionable.

Board of Park Commissioners vs. Common Council, 28 Mich., 239.

New Orleans vs. N. O. Water Works Co., 142 U. S., 91.

The city and the railway companies have, ever since the original ordinances, practically and uniformly construed the consents as controlling their mutual rights and obligations except in those particulars in which they have been changed with the consent of both parties. What the railway companies have consent to do by such modifications as have been made furnishes no measure of its rights under the consents, or sanctions their impairment.

Lake Shore Ry Co. vs. Smith, 173 U. S., 684, 697.

Highland Park vs. Plank Road Co., 95 Mich., 489, 491.

With full knowledge of their provisions, twelve years after the enactment of the second proviso and the Act of 1867, the city authorities also expressly renewed and rati-

fied these ordinances and their acceptance as the lawful agreement of the city and companies. The rights of the parties must be measured by the law as it now stands and by their agreements thereunder.

By the ordinance of November 14th, 1879, Sec. 5, "the powers and privileges conferred or obligations imposed on the Detroit City Railway by the ordinance of November 24 and the amendments thereto, are hereby extended and limited to thirty years from this date." By the ordinance of June 30th, 1880, a like proviso was made relative to the Fort Wayne & Elmwood Street Railway Company (later known as the Fort Wayne & Belle Isle Railway Company), confirming and extending for thirty years its grant under the ordinance of January 31st, 1865. Like ordinances were passed in favor of other lines. The practical construction given by the parties to their agreement prior to November 14th, 1879, ever since the enactment of the second proviso of Sec. 34 of the Act of 1855 and the Act of 1867, a period of 37 years, is a fair standard in itself of their rights thereunder—Chicago vs. Sheldon, 9 Wall., 50-54—and when supplemented and adopted by these confirmatory ordinances, which the statutes authorized, the fact that the original ordinances antedated the second proviso of Section 34, is a matter of no moment. The Act of 1867 and the second proviso of Section 34 of the Act of 1855 should be construed as a ratification of those ordinances.

> City Railway Co. vs. Citizens' Ry. Co., 166 U. S., 567, 569.

The ordinances of 1879 and 1880 and their acceptance had all the force and effect of a new consent, which was authorized by the Legislature and protected both by Section 34 of the Train Railway Act, as it then stood, and by Section 20 of the Street Railway Act of 1867, against de-

struction or impairment by the municipal authorities, and are sustained by sufficient consideration.

City Ry. Co. vs. Citizens' Ry. Co., 166 U. S., 568.

The argument that it is not claimed in the bill that by a reduction of fares from five to three cents the contract is "unreasonably impaired," and, therefore, is a "regulation" which the city authorities may lawfully make under Section 34 of the Act of 1855 and Section 19 of the original consent ordinance, is untenable.

> "An objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract or dispensing with the performance of those which are, however minute, or apparently immaterial in their effect upon the contract of the parties, impairs its obligations."
>
> Green vs. Biddle, 8 Wheaton, 184.
> Walker vs. Whitehead, 16 Wall, 314.

That the original and subsequent ordinances which are recited above, accepted by the complainant and its assignors, established the right of the street railway companies to a five-cent fare, is as clear as that the attempted reduction of that fare by the enactment of the ordinances of August 16, 1899, impaired the obligations of the contract of consent between the city and the companies. It is as idle to claim that the change of rate did not "unreasonably" impair that consent as to deny that the proposed reduction of fares is not the deprivation of the railway company's "right of constructing, maintaining and operating such railway in the streets in such consent or grant named, *pursuant to the terms thereof*." By any change of its terms or any regulation diminishing its value or alter-

ing its conditions to the prejudice of either party, a contract is "unreasonably" impaired. It is not the degree, but the fact of impairment that determines the validity of legislation effecting it. In the case at bar, the "regulation" that the company shall sell eight tickets for twenty-five cents, each of which tickets shall be valid for the carriage of a passenger for whose transportation the company, under its agreement with the city, is authorized to collect five cents, is so clearly the deprivation of a right valuable to the company that the effect "goes without saying."

In Detroit vs. Detroit and Howell Plank Road Co., 43 Mich., 140, 146, it was sought to compel the respondent company to remove two and one-half miles of its road from within the city without compensation, and in violation of its chartered rights. The proceedings were taken under the act of the Legislature forbidding the company to take tolls on paved roads within said limitations. Justice Campbell said:

> "What the city claims a right to do, is to deprive the respondent of the privilege any longer to take tolls for travel and traffic on two and one-half miles of its road. If it may do this in respect to one part of the road, it may in respect to any other part. If it may exclude the respondent from Detroit, it may from Howell also, or from any other township on the line, and a single section of the statute may annihilate the property of respondent altogether. A statute which could have this effect would not be a statute to amend franchises, but a statute to confiscate property; it would not be a statute of regulation, but of spoilation."

A fortiori, as the city derives all its powers from the Legislature which has prohibited its recession from its consent, the attempted abrogation of that contract and the deprivation of the rights which it confers is an indefensible usurpation.

The argument that the ordinances of August 16th, 1899, were passed in the exercise of the "police power" of the State by its agent, the city, affords no justification to the defendant. Without attempting to specify what is included in the elastic term "police power," the view taken of the contractual relations of complainant and the city negatives the defense asserted on that ground. In the language of Mr. Justice Peckham:

> "This (the police power) must, however, be exercised in subordination to the provisions of the Federal Constitution. If, in the assumed exercise of its police power, the Legislature of a State directly and plainly violates a provision of the Constitution of the United States, such legislation would be void."
>
> Lake Shore Ry. Co. vs. Smith, 173 U. S., 689, 690.

These ordinances contravene the provisions of the Federal Constitution forbidding the impairment of contracts and the deprivation of property without due process of law and equally the statutes of Michigan, from which alone the city obtained the power to grant its consent, unless that consent has reserved the power to modify its terms and conditions.

This result necessitates the proposition that the ordinances of August 16th, 1899, are a proper exercise of the powers reserved to the city by Section 19 of the ordinances of consent of 1862 and 1865, and, therefore, do not impair the contract of the parties. This contention is without merit. That section reserved the power to enact "such further rules, orders and regulations as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railways." Similar sections are contained in the later ordinances granting consent to the construction and operation of the new lines owned by complainant. The terms,

"further rules, orders and regulations" for the purposes specified are inapt to express a purpose to vary the "consent, permission and authority" granted, but are a declaration of the right and purpose of the city authorities to "further" exercise the police power in regard to all matters incident to the construction and operation of the road, such as the location of the tracks in the streets, the placing of switches and turn-tables, the repair of the pavement between the tracks, the removal or limitation of the number of tracks, in the interest of public travel (Grand Rapids Railways, 43 Mich., 433; Baltimore Trust Co., 166 U. S., 673), the frequency with which cars should be run for the public convenience, the stopping of cars at street crossings, the use of fenders, the rate of speed to be maintained, the sale of tickets (City of Detroit vs. Railway Co., 95 Mich., 456) and generally to details of the conduct and operation of the railway which experience might show to be necessary in addition to or in amendment of those specified in the consent for the protection of life, the accommodation of the public and the avoidance of injury to private property. Such regulations are not invasions of the contract rights of the company, and are just and reasonable. (Lake Shore & Mich. Southern Railway Co. vs. Ohio, 173 U. S., 285, 305.)

But the right of the grantee to use its franchise in the city and to take the stipulated fare for the carriage of passengers are vested rights of property under the consents, and clearly distinguishable from immunity from the duties and requirements necessitated by the new easement and consistent with its full enjoyment, and from which even the Legislature could not release the grantee.

The entire abolition of fares might, for a time, conduce, in a degree, to the material "interest" and "welfare" of the traveling public and be a public "accommodation," but the rule, order or regulation which would require free trans-

portation of the public would differ only in degree from the ordinances in question, which have no relation to the comfort, safety or welfare of society.

Cooley's Cons. Lim., p. 577.
People vs. Jackson Plank Road Co., 9 Mich., 306.

If the city may sequester two-fifths of the grantee's earnings, why may it not take all? Such a power is neither expressly given, nor can it be implied. It is confiscation. Besides the considerations already stated, which conclusively repel this defense, may be added that the canons of statutory construction also exclude it. The rates of fare having been eo nomine fixed by one section of each of the many ordinances of consent and by Section 20 of the Acts of 1867, are not within the general authority to make "rules, orders or regulations" committed to the discretion of the Common Council by Section 19. The general words of that section must yield to the specific provision fixing the rate of fare.

Horner vs. Collector, 1 Wall., 486, 490.
Reiche vs. Smythe, 13 Wall., 162, 165.

The same rule of interpretation must be applied to municipal ordinances as obtains in construing statutes. A thing which is given in particular shall not be taken away by general words.

Churchill vs. Crease, 5 Bing., 180.

The fundamental principle of construction applicable both to legislative and municipal enactments is that the intention of the Legislature is to govern.

Sedgwick on Stats. & Cons. Law, p. 360.
Pease vs. Whitney, 5 Mass., 380, 382.

It has never been claimed for Section 19 and the corresponding sections in all the numerous ordinances of con-

sent passed by the Common Council that they authorized any interference with the rates of fare prescribed by all the consent ordinances from 1862 to 1899, inclusive. This disclaimer, for a period of thirty-seven years, also negatives the relation of that section to the subject of fares.

The objection to the validity of the consent ordinances that the Common Council was without power to grant an easement in its streets for thirty years, and, therefore, the rate of fares could not be fixed so as to be beyond the control of the city authorities for that period, has been determined adversely to the defendant in Detroit Citizens' Street Ry. Co. vs. City of Detroit, 64 F. R., 628, 646. There is nothing in the charter of the city which sanctions the action of its Common Council.

The arguments have taken a wide range, and many questions have been presented relative to the power of the Legislature to prescribe or change the rates of transportation of railway companies and otherwise alter or amend the organic acts under which they were formed, but those questions are foreign to the issues here involved. While the authorities cited have been carefully examined, nothing has been found which controls the determination of this case.

It follows from what has been said that the motion to vacate the restraining order must be denied, and that the complainant is entitled to an injunction against the enforcement of the ordinances of August 16, 1899, and such injunction will issue accordingly.

Detroit, March 15, 1900.

(Signed) HENRY H. SWAN,
District Judge.

UNITED STATE OF AMERICA—In the Circuit Court of the United States for the Eastern District of Michigan, Southern Division, in Equity.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY

vs.

THE CITY OF DETROIT et al.

EASTERN DISTRICT OF MICHIGAN, } ss.

I, Walter S. Harsha, clerk of the Circuit Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of the opinion of Judge Swan in the above entitled cause as the same appears on file in my office; that I have compared the same with the original, and it is a true and correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Detroit, in said District, this nineteenth day of March, in the year one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

(Seal.)

WALTER S. HARSHA,
Clerk.

(Ten-cent revenue stamp.)

152.

Br. of Duffield for Appellee.

No. 152.

Filed Oct. 14, 1901.

Supreme Court, U.S.
FILED
OCT 14 1901
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

October Term, 1901.

THE CITY OF DETROIT et al.,
Defendants and Appellants,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

BRIEF OF HENRY M. DUFFIELD, FOR COMPLAINANT AND APPELLEE.

MICHAEL BRENNAN and
JOHN C. DONNELLY,
Of Counsel.

DETROIT:
Record Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1901.

No. 152.

SUPREME COURT OF THE UNITED STATES.

October Term, 1901.

THE CITY OF DETROIT et al.,
Defendants and Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

BRIEF OF HENRY M. DUFFIELD, FOR COMPLAINANT AND APPELLEE.

STATEMENT OF THE CASE.

The complainant street railway company was incorporated in 1891 under the Michigan Street Railway Act of 1867, Howell's Annotated Statutes, Chapter 95, Vol. 1, p. 908, et seq. (Record, p. 107.)

Under the authority of this statute, hereinafter quoted, it had acquired all the rights, privileges and franchises of the Detroit City Railway, the Grand River Street Railway Company, the Congress and Baker Street and Dix Avenue Railway Companies, the Highland Park Railway Company, and had leased the Detroit, Fort Wayne & Belle Isle Railway. (Record, pp. 107, 109, 111.)

On August 16th, 1899, it was lawfully maintaining and operating this street car system, comprising upwards of

one hundred and thirty-four miles of street railway, in the City of Detroit, under various ordinances of said city, hereafter more especially referred to, which were adopted subsequently to the Street Railway Act of 1867, and the amendments of that year to the Tram Railway Act, to the terms of which ordinances the company and its predecessors had, pursuant to the express requirements of the ordinances, filed consents in writing.

The rates of fare were established in these ordinances, by agreement between the street railway companies and the city, for priods which have not yet expired, at five cents for a single fare, except during certain hours (five-thirty to seven o'clock in the morning, and five-fifteen to six-fifteen in the evening), when tickets could be purchased and used at the rate of eight for twenty-five cents, and there was no general right of transfer from one line to another. The language used in the various ordinances as to fares was:

> "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance." Detroit City Railway, Ordinance of 1862, extended November 14th, 1879, and subsequently by various ordinances. (Record, pp. 29, 35.)
>
> "It shall carry passengers * * * for a single fare of five cents for one continuous trip." Cass Avenue, Congress Street, etc., extensions of Detroit City Railway, Ordinance of January 3d, 1889. (Record, p. 44.) "The rate of fare over such route shall be five cents." Myrtle Street extension to Grand River Street Railway Company, June 27th, 1885. (Record, p. 60.)
>
> "Shall agree to carry passengers for a single fare of five cents for one continuous trip." Crawford and East Congress Street extensions of Grand River Street Railway Company, January 3d, 1889. (Record, p. 60.)
>
> "Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance." Cass Avenue and Third Street extension to Detroit City Railway, January 3d, 1889. (Record, p. 89.)
>
> "The rate of fare for a single trip shall not exceed five cents for any distance within the city limits." Dix Avenue extension to Detroit City Railway, April 17th, 1886 (Record, p. 63), and Highland Park Railway, June 13th, 1886. (Record, p. 67.)
>
> "The rate of fare for any distance shall not ex-

ceed five cents in any one car." Fort Wayne & Belle Isle Railway Company, July 24th, 1886 (Record, p. 76), and Grand River Street Railway Company, May, 1868. (Record, p. 54.)

"Each passenger * * * shall pay only one fare, the amount of which shall be five cents." Elmwood Avenue and East Lafayette (now Champlain Street) extension Fort Wayne & Belle Isle Railway, December, 1886. (Record, p. 78.)

"Each passenger * * * shall pay only one fare, the amount of which shall not exceed five cents." Extension of Grand River Street Railway Company, January 3d, 1889. (Record, p. 82.)

The Constitution of the State of Michigan provides:

Article IV, Section 38. "The legislature may confer upon organized townships, incorporated cities and villages, and upon the Board of Supervisors of the several counties, such powers of a local legislative and administrative character as they may deem proper."

Howell's Annotated Statutes, Vol. 1, p. 48.

Article XV, Section 1. "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes."

Howell's Annotated Statutes, Vol. 1, p. 64.

Until the amendment in 1861 to the Tram Railway Act of Michigan, there was no statute authorizing the incorporation of street railway companies.

This amendment provided:

Section 33. "It shall be competent for parties to organize companies nder this act, to construct and operate railways in and through the streets of any town or city in this State."

Section 34. "All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them: Provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulation and upon such terms

and conditions as said authorities may from time to time prescribe."

Public Acts of Michigan, 1861, p. 11.
Howell's Annotated Statutes, §§3526-3527, Vol. 1, p. 906.

In 1867 this amendment was amended by adding a further proviso:

"Provided, further, that, after such consent shall have been *given and accepted by* the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

Public Acts of Michigan, 1867, p. 257.

An additional section was added providing that it should be a sufficient designation, in the articles of association of any street railway company, of its route or routes "to declare that said railway is to be constructed and maintained in such public streets or public ways of the particular city as has been or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities of such city; and it shall be lawful to build, maintain or extend the railway of such company according to the terms or conditions of such grant or grants," and that any company theretofore organized might amend its articles of association to conform to this section. (Section 36.)

Howell's Annotated Statutes, Vol. 1, p. 907, §3539.

In 1871 the act was further amended to allow street railways to intersect, cross-join, and unite their railways to others. (Section 41.) And a section added providing "that all the provisions of the act as amended should be applicable to all corporations now organized under this act as though specifically named. (Section 42.)

Howell's Annotated Statutes, Vol. 1, p. 908, §§3534, 3535.

The Detroit City Railway, the Grand River Street Railway Company and the Fort Wayne and Elmwood Avenue Railway were organized under this law. The right of the legislature to alter, amend or repeal this act was thus qualified by Section 31, "but such alteration, amendment or repeal shall not operate as an alteration or amendment of the corporate rights of the companies formed under it, unless specifically named in the act so altering or amending this act."

Howell's Annotated Statutes, ubi sup., §3525.

At the same session of the Legislature a law for the incorporation of street railways was enacted.* Under it street railway companies could be organized with the usual powers, including the right to borrow money and mortgage their property—Section 1—which could, with the consent of the corporate authorities of any city, given by ordinance, construct, own, operate and maintain a passenger street railway in such streets and ways in said city as might from time to time be designated in the ordinance granting such consent under such rules, regulations and conditions as such ordinance should prescribe; *but no such railway company should construct* any railway in the streets of any city * * until the company should have accepted in writing the terms and conditions upon which they were permitted to use said streets. Section 13.

After such consent by said city, and the acceptance thereof by the Street Railway Company, such city should not *revoke such consent or deprive the company of the rights and privileges so conferred.* Section 14.

The rates of face were to "be *established by agreement* between such company and the corporate authorities of the city where the road is located." Section 20.

Any street railway company might purchase, acquire or hire any street railway in any city, owned by another corporation, together with all the real and personal property and "the rights, privileges and franchise of such company," and might use and enjoy the same "upon the same terms as the company whose roads and franchises were acquired might have done." Section 15.

All "the powers, rights, protection and privileges conferred by this act," and all the liabilities imposed by it, were granted to and imposed on "all corporations and companies heretofore organized in this state for the purpose of

*Note.—The sections of the statutes referred to Howells Annotated Statutes Vol. 1, Chap. 95, p. 908 and Chap. 94, p. 900, are copied in full in the appendix to this brief.

building and operating street railways under the statutes then in force." Section 29.

It also provided that all street railway companies and corporations thereafter formed should "be organized under the provisions of this act." Section 30.

> Howell's Annotated Statutes, Vol. I., Chap. 95, pp. 908, 911, 912, 913, §§3536, 3548, 3549, 3550, 3555, 3564, 3565.

The complainant company, and all the other street railway companies whose rights it acquired, except the Detroit City Railway, Grand River Street Railway and the Fort Wayne and Elmwood Avenue Railway, were organized under this law.

Subsequent to the enactment of these laws the Common Council of the City of Detroit, with the approval of the Mayor, adopted ordinances with respect to the several street railway companies, to whose rights complainant has succeeded. These ordinances by their terms and as required by statute, were consented to in writing by said companies. Their provisions as to fares have been quoted above.

In respect to the Detroit City Railway the original ordinance of 1862 (Record, p. 27) was amended in 1879 and extended for a term of thirty years thereafter. (Record, p. 35.)

This ordinance was attacked by the city and its validity was sustained by the U. S. Circuit Court of Appeals for the Sixth Circuit, before Mr. Justice Jackson, Circuit Judge Lurton and District Judge Barr.

> Detroit Citizens' Street Railway vs. City of Detroit, 64 Federal R., p. 628.

The Fort Wayne and Elmwood Railway took its grant of rights in the street through an ordinance of 1865, which was extended to thirty years from June 30, 1880, by the ordinance of that date. (Record, pp. 156, 160.)

The Grand River Street Railway was organized in 1868 after the amendments of 1867 to the Tram Railway Act and the passage of the General Street Railway Law. Its original ordinance was adopted in May, 1868 (Record, p. 52), and extended by ordinance of 1885. (Record, pp. 57-58.)

The ordinances governing all the other street railway companies were adopted after the amendment of 1867 to the Tram Railway Act and the enactment of the General Street Railway Law of 1867, above quoted.

At the time of the purchase by the complainant com-

pany in 1891 of its various lines of street railways, they were operated by the companies then owning them under the above named and other ordinances adopted by the Common Council of the City of Detroit, under the authority of and in obedience to Section 20 of the Street Railway Act, which required that the rates of fare should "be established by agreement between company and the corporate authorities of the city." The companies had accepted these ordinances in writing, as required by the statute, and the rates of fare under these ordinances had thus been "established by agreement" at five cents for a single fare, with no general right of transfer.

The case shows that the complainant company, in reliance upon this legislation and the municipal ordinances thereunder, in order to procure the funds necessary for the construction, repair, reconstruction from horse railway to electric railway system, and operation of its various lines of street railway in the streets of Detroit, had borrowed upwards of eight million dollars, and to secure the same had issued therefor its gold bonds to the amount of more than eight million dollars, secured by mortgages or trust deeds on all its real and personal property, including all its rights and franchises under the state and municipal legislation heretofore quoted, which said bonds are held by purchasers, who took and paid for the same in the full faith and belief of the contractual validity of said legislation and ordinances. (Record, p. 172.)

On the 16th day of August, 1899, and while all the above cited statutes and ordinances were in full force, the Mayor and Common Council of the City of Detroit adopted five ordinances similar in terms to the following:

An ORDINANCE to require the Detroit Citizens' Street Railway, its successors and assigns, to keep on sale and to sell eight (8) tickets for twenty-five cents and give transfers to passengers upon the lines of street railway operated by the said company in the City of Detroit.

It is hereby ordained by the People of the City of Detroit:

Section 1. That the ordinance of said city, approved November 14, 1879, entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate certain railways in the City of Detroit,' approved November 24, 1862, and the amendments thereto, and for other purposes," be, and the same is hereby amended by adding thereto a new section to stand as Section 6a, and read as follows:

Section 6a. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service at all times tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction over the lines or route operated by said railway company, its successors and assigns, on a car on which it is presented; and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he received said transfer ticket. This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit United Railway.

Section 2. This ordinance shall take immediate effect. (Record, p. 17.)

The complainant company filed the bill in this case in the Southern Division of the Circuit Court of the United States for the Eastern District of Michigan, in Equity, to restrain the enforcement of these ordinances and have them declared void as impairing the obligation of the contract between it and the city under the prior ordinances above cited. (Record, pp. 1 to 17.)

The Circuit Court granted a restraining order and upon a final hearing issued a perpetual injunction against the city. (Record, p. 105.)

The opinion of the Court on the merits of the case was delivered on the denial of the motion to vacate the restraining order and is found on Record, p. 86, et seq.

The city now brings the case here on appeal.

The complainant and defendants are citizens of Michigan, but the jurisdiction of the Federal Court is invoked by the bill under the authority of

City Railway Company vs. Citizens' Railroad Company, 166 U. S., 557.

Walla Walla vs. Walla Water Company, 172 U. S., 1.

Hamilton vs. Hamilton Gas Light Co., 146 U. S., 158.

And Regan vs. Farmers' Loan and Trust Co., 154 U. S., 362.

It was not disputed in the Court below. (Record, p. 97.)

BRIEF.

I.

The provisions in the ordinances giving to the Detroit City Railway and to the other grantors of the complainant company the right to fix fares within the limit of five cents for a single fare, when accepted by the company, constituted an irrevocable contract with the city, which passed to the complainant company on its purchase of the property, franchises, rights and privileges of its grantors.

This is so clear in principle and has been so repeatedly decided that argument is unnecessary.

The Supreme Court of Michigan in several cases has so held with respect to the ordinances in the case at bar of the Detroit City Railway of 1879 and of the Grand River Street Railway Company of 1885.

City of Detroit vs. Detroit City Railway, 76 Mich., 421.

Detroit Citizens' Street Railway Company vs. Common Council, 85 N. W. Rep., 96.

Same case on petition for rehearing, id, p. 107.

And under a similar ordinance in the Electric Co. of Grand Rapids vs. Common Council, 84 Mich., 257.

The same rule was declared in respect of the Michigan Central R. R. charter by which the company were given the right to fix the rates to be charged for the transportation of passengers within the limit of the maximum rate therein prescribed of three cents a mile.

Pingree vs. Michigan Central Railroad Co., 118 Mich., 314,

in which Hooker, Justice, collates many decisions, among others:

New Orleans Gas Co. vs. Louisiana Light Company, 115 U. S., 650, and cases there cited.

Electric Railway Co. vs. Grand Rapids, 84 Mich., 257.

Township of Hamtramck vs. Rapid Railway, 84 Mich., 257.

Union Street Railway Co. vs. Circuit Judge, 113 Mich., 645.

The United States Circuit Court of Appeals for the Sixth Circuit, Mr. Justice Jackson presiding, so held in respect to the ordinance of 1879 here in question, in the Detroit Citizens' Street Railway vs. City of Detroit, 64 Fed., 629, a writ of certiorari to review which was denied by this court in City of Detroit vs. Detroit Citizens' St. Ry. Co., 163 U. S., p. 583, and which was held to be *res adjudicata* upon an application of the city for a mandamus to the Attorney-General to file a quo warranto against the company to test the validity of the ordinance.

> City of Detroit vs. Attorney-General, 103 Mich., p. 612.

Also as to same ordinance by the Circuit Court of the United States for the Eastern District of Michigan, Taft, J., in

> City of Detroit vs. Detroit Citizens' Street Railway Co., 60 Fed., 161, 171.

These decisions are confirmed by this Honorable Court upon an ordinance and state of facts substantially like those in the case at bar.

> City Railway Company vs. Citizens' Street Railroad Co., 166 U. S., 557-567,

where it is said: "This proposition" (the city ordinance) "when accepted by the company and the road built and operated as specified became a contract which the state was not at liberty to impair during its continuance."

To the same effect:

> Louisville Trust Co. vs. Cincinnati (C. C. A.), 76 Fed. R., 209.
>
> Mayor, etc., of Knoxville, vs. Africa (C. C. A.), 77 Fed. R., 501, 507, 508,

where it is said, Lurton, J.:

> "What is the extent of the power intrusted to the city government? The answer is plain. It is to 'consent' to the occupation * * * of the streets of the city * * * as shall be deemed in the interest of the public. The consent, when given by ordinance duly passed, constitutes a grant of a right of way in and on the streets named or described in the ordinance, and constitutes a contractual ordinance conferring an easement which is irrevocable."

Cleveland City Railway Company vs. Cleveland, 94 Fed. R., 385 (1899), holds:

City ordinances making grants of franchises to street railroad companies on specified conditions, when accepted by the companies, constitute contracts, which cannot be annulled or amended except by consent of both parties, and which are protected from impairment by the fourteenth constitutional amendment.

A federal court of equity may grant relief by injunction against a city ordinance which impairs the contract rights of complainant, or deprives him of his property without due process of law.

The statutes of Ohio confer power upon municipalities to determine the conditions of the grant of a franchise to a street railroad company, including the rates of fare to be charged, but no power to thereafter prescribe rates of fare; and where the grant itself fixes the rate of fare a reserved right of regulation does not authorize the municipality to thereafter change it during the life of the grant.

So also the case of Africa vs. Board of Mayor and Aldermen, 70 Fed., 730.

The franchise of a street railway company to operate its road and use the streets of a city is derived from the Legislature, through its charter, and not from the municipal corporation, though the consent of the latter may be required to the exercise of its authority; and the consent of the municipality, when once given, cannot, in the absence of a statute authorizing its withdrawal, be withdrawn.

The ordinance by which the consent of the city was given to the construction of the road provided that the rights conferred should exist during the corporate existence of the company. Held, that the city was without power, and could not, from such ordinance, be supposed to have intended to limit its consent to any less period than the duration of the franchise granted by the State.

Held, further, that under the provisions in the statute relating to consolidation of railway companies, that the consolidated company should have all the rights, etc., and be subject to all duties, of the constituent companies, the Consolidation of the Knoxville Co. with the other companies worked a change of name, the franchise in the streets of the City of Knoxville passing to the new company, and the consent of the city was not terminated by extinguishment of the companies to which it was granted.

In so far as it it applicable to the case at bar, this decision was affirmed by the U. S. Circuit Court of Appeals

for the Sixth Circuit, in Mayor, etc., of Knoxville vs. Africa, 77 Fed., pp. 501, 510, 512.

It is said by the Supreme Court of Mississippi, in Stone vs. Yazoo & Miss. R. R. Co., 62 Miss., 607 (which is approved by this Court in Railroad Commissioners' Cases, 116 U. S., 307): "If anything is or ever can be settled in American constitutional law, the sanctity and inviolability of a contract between a State and individuals in the shape of a charter for a business enterprise, accepted and acted on by the corporators on the faith of its terms and provisions, must be so regarded."

It would seem safe to rest complainant's case on these and many other like decisions which could be cited, but the counsel for the city has filed such a lengthy brief in opposition to their conclusions that out of abundant caution we will discuss the case more in detail.

II.

The ordinances do not purport to regulate fares, but attempt an unlawful discrimination between passengers against the legal rights of the company.

a. The ordinances complained of do not change the rate of single fares, but require the company to keep for sale at all times on its cars in service strips or packages of eight tickets, to be sold for twenty-five cents, each of which tickets shall be accepted by the railway company for a single ride for any distance in either direction over its line on the car on which it is presented.

b. They further require the street railway company to grant on presentation of one of said tickets, or on payment of a single fare of five cents, a transfer ticket good for a continuous ride on any other line or route of the company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes after the passenger leaves the car on which he received the transfer ticket.

The purpose and intent of the ordinances are to reduce the price of a single fare from five cents to three and one-eighth cents, only to those who buy a number of tickets, and to compel the company to give an additional ride for the reduced fare. To illustrate:

On payment of five cents, or presentation of an "eight-for-a-quarter ticket," one may get on a car of the Brush Street line at the Detroit & Milwaukee Junction, in the

northeastern part of the city, ride to within a block of the river at the foot of Woodward avenue, a distance of about six miles; spend ten or fifteen minutes about his business or his pleasure, and take a transfer to the Woodward Avenue line car, running in a general way parallel to Brush street, and carrying him out to the city limits at the northerly end of the city, a further distance of about four miles. Thus any person living on either Woodward avenue or Brush street, which run parallel to each other and are but two blocks apart, may take either line to the center of the city or to the river; spend fifteen minutes there, and then ride back on the other line to within two blocks of his residence or place of business upon payment of but one fare. For it must be remembered that the transfers are not limited to carriage in a generally continuous direction, but the ordinance requires the company to give a transfer ticket "over any other line or route of said company." Or he may take a car at the Biulevard, on the Grand River Avenue line, at the city limits, limits, and ride along Grand River, Woodward and Jefferson avenues to the Belle Isle Park Bridge, a distance of about seven miles; spend fifteen minutes looking at the river, or attending to any business he may have there, and then compel the company to carry him on a transfer ticket back from that point along the Congress and Baker Street and Dix Avenue lines, which run generally parallel to Jefferson avenue, to the Township of Springwells, on the extreme westerly limits of the city. In other words, under these ordinances the company must give, to persons buying tickets, two rides for three and one-eighth cents, and to all other passengers two rides for five cents, for which they are now entitled to charge ten cents.

The provision as to sale of tickets at reduced rates is similar in legal effect to the act of the Michigan Legislature which was considered by this Court in

> Lake Shore Railway vs. Smith, 173 U. S., pp. 684, 692,

where it was held that the act was not a legal regulation of rates of fare and that it impaired the contract rights of the railway company.

Mr. Justice Peckham, speaking for the Court, says:

> "The question is presented in this case whether the Legislature of the State, having power to fix maximum rates and charges for the transportation of persons and property by railroad companies, with the limitations above stated, and having power to

alter, amend or repeal their charters, within certain limitations, has also the right, after having fixed a maximum rate for the transportation of passengers, to still further regulate their affairs and to discriminate and make an exception in favor certain persons, and to give them a right of transportation for a less sum than the general rate provided by law.

It is said that the power to create this exception is included in the greater power to fix rates generally; that having the right to establish maximum rates, it therefore has power to lower those rates in certain cases in favor of certain individuals, while maintaining them or permitting them to be maintained at a higher rate in all other cases. It is asserted also that this is only a proper and reasonable regulation."

"It does not seem to us that this claim is well founded. We cannot regard this exceptional legislation as the exercise of a lesser right which is included in the greater one to fix by statute maximum rates for railroad companies. The latter is a power to make a general rule applicable in all cases and without discrimination in favor of or against any individual. It is the power to declare a general law upon the subject of rates beyond which the company cannot go, but within which it is at liberty to conduct its work in such a manner as may seem to it best suited for its prosperity and success. This is a very different power from that exercised in the passage of this statute. The act is not a general law upon the subject of rates, establishing the maximum rates, which the company can in no case violate. The Legislature having established such maximum as a general law now assumes to interfere with the management of the company while conducting its affairs pursuant to and obeying the statute regulating fares and charges, and notwithstanding such rates it assumes to provide for a discrimination, an exception in favor of those who may desire and are able to purchase tickets at what might be called wholesale rates, a discrimination which operates in favor of the wholesale buyer, leaving the others subject to the general rule" (pp. 690, 691).

"It thus invades the general right of the company to conduct and manage its own affairs, and compels

it to give the use of its property for less than the general rate to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the company without dut process of law" (p. 691).

"The right to claim from the company transportation at reduced rates by purchasing a certain amount of tickets is classed as a convenience. As so defined, it would be more convenient if the right could be claimed without any compensation whatever. But such a right is not a convenience at all within the meaning of the term as used in relation to the subject of furnishing conveniences to the public. And also the convenience which the Legislature is to protect is not the convenience of a small portion only of the persons who may travel on the road, while refusing such alleged convenience to all others, nor is the right to obtain tickets for less than the general and otherwise lawful rate to be properly described as a convenience. If that were true, the granting of the right to some portion of the public to ride free on all trains and at all times might be so described. What is covered by the word "convenience" it might be difficult to define for all cases, but we think it does not cover this case. An opportunity to purchase a thousand-mile ticket for less than the standard rate we think is improperly described as a convenience."

"The power of the Legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in the community and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation. We do not deny the right of the Legislature to make all proper rules and regulations for the general conduct of the affairs of the company, relating to the running of trains, the keeping of ticket offices open and providing for the proper accommodation of the public."

"This act is not one like establishing certain hours in the day during which trains shall be run for a less charge than during the other hours. In such case it is the establishing of maximum rates of fare for the whole public during these hours, and it is not a dis-

> crimination in favor of certain persons by which they can obtain lower rates by purchasing a certain number of tickets by reason of which the company is compelled to carry them at the reduced fare, and thus, in substance, to part with its property at a less sum that it would be otherwise entitled to charge" (p. 691).

The ordinances complained of by necessary implication make these tickets good during the entire life of the grant of the use of the streets in the prior ordinances and in this respect is within the opinion, as follows:

> "The act also compels the company to carry not only those who choose to purchase these tickets, but their wives and children, and it makes the tickets good for two years from the time of the purchase. If the Legislature can, under the guise of regulation, provide that these tickets shall be good for two years, why can not it provide that they should be good for two years or ten years, or even a longer term of years? It may be said that the regulation must provide for a reasonable term. But what is reasonable under these circumstances? Upon what basis is the reasonable character of the period to be judged? If two years would and five years would not be reasonable, why not? And if five years would be reasonable, why would not ten? If the power exist at all, what are the factors which make it unreasonable to say that tickets shall be valid for five or for ten years? It may be said that the circumstances can change within that time. That is true, but circumstances may change just as well within two as within five or ten years. There is no particular time in regard to which it may be said in advance and as a legal conclusion that circumstances will not change. And can the validity of the regulation be made to depend upon what may happen in the future, during the running of the time in which the legislation has decreed the company shall carry the purchaser of the ticket? Regulations for maximum rates for present transportation of persons or property bear no resemblance to those which assume to provide for the purchase of tickets in quantities at a lower than the general rate, and to provide that they shall be good for years to come. This is not fixing maximum rates, nor is it proper regulation. It

is an illegal and unjustifiable interference with the right of the company" (pp. 692, 693).

b. The provision as to transfers is not valid. It is not a regulation of fares. It is a requirement that the company shall give two rides for one fare; shall stop a car on another of its routes to take on a passenger, carry him to his destination and again stop the car to let him off without any compensation whatsoever. The illustration given above shows how detrimental this transfer requirement is to the company, under the peculiar street plan of Detroit.

This question was passed upon in

Old Colony Trust Co. vs. City of Atlanta, 83 Fed., 45.

The Court held that:

"One continuous ride for a single fare is one thing, and two or more rides, with the necessary stoppage and letting passengers off and letting them on, is another and entirely different thing. Many reasons have been urged in argument, and others might be suggested, which in our opinion make a broad distinction between the two classes of service, namely, between a continuous ride in one car and a ride requiring transfers from one or more cars to others. Unquestionably this ordinance, as to its feature requiring transfers, is a very broad exercise of municipal power. It appears to go to the limit of municipal control even under legislative authority. The power to pass the ordinance should be clearly shown. On the contrary, it is clear to us that the city is without such power."

III.

The rights of the complainant company are to be determined by the amendments to the Tram Railway Act, the General Street Railway Act of 1867 and the subsequent amendments up to 1899 and the ordinances adopted thereunder, and not by the Train Railway Act as amended in 1861 and the ordinances adopted under it.

This is tacitly admitted by the counsel for the city except as to the rights of the complainant derived from the Detroit City Railway Company and the Fort Wayne and Elmwood Railway, which were incorporated under the amendment of 1861 to the Tram Railway Act and obtained their ordinances in 1862 and 1865. Also as to the Grand River Street Railway Company, which was incorporated under Chapter 94, Howell's Statutes (Tram Railway Act) in 1868, although the Street Railway Act enacted prior to that date forbade any incorporation of street railway companies except under its provisions.

It is plain, however, that the powers of the Common Council were governed then as to any street railway company by the Street Railway Act and the amendments of 1867 to the Tram Railway Act.

As to these three companies he asserts that "their powers and rights must be construed solely with reference to the act under which the original companies were incorporated." But this contention is in direct contradiction to section forty-two of the Tram Railway Act, which made all the provisions of the act as amended applicable to all corporations now organized under it as though specially named, and also to section 29 of the Street Railway Act, which expressly provides "all companies and corporations heretofore organized in this state for the purpose of building and operating street railways under the statutes then in force shall have the same powers, rights, protection and privileges as are hereby provided for companies and corporations organized under the provisions of this act." No claim is made and none can properly be made by the city of any lack of power in the legislature to make this provision. It is said by this Court in Citizens' Street Railway vs. Detroit Railway, 171 U. S., pp. 48, 52, quoting with approval the Supreme Court of Michigan in same case, 68 N. W. R., 304, "and in conferring those (local, legislative and administrative) powers it is not to be dis-

puted that the legislature may give extensive capacity to acquire and hold property for local purposes or it may confer authority within the narrow bounds, and what it thus confers it may enlarge, restrict or take away at pleasure."

Even as to the original ordinances of 1861 and 1865, granted while the statute still reserved to the city the right of regulation from time to time, we submit the proviso amendment of 1867 prohibiting any change in the terms of consent detrimental to the company became at once binding upon the city as a limitation upon its powers in the future.

But passing that qustion, which is not essential to the case: How can the claims of the city to act in 1899 under the 1861 amendment be sustained in the face of its previous action in 1879 and 1880 and 1885?

When the city passed the extension ordinances of those years the Street Railway Act was in full force. One section expressly declared that the rate of fares should be established by agreement, and another section declared that all companies theretofore organized should have the same powers, rights, *protection* and privileges provided for in the act as amended. Thereafter the city repealed the original ordinances of consent in some respects and extended them for thirty years in all other respects, including the rates of fare, and the companies filed their consents thereto in writing. It certainly needs no argument to show that this action was taken under and is to be governed by the legislation in force in 1867 and spbsequently until 1879.

In support of his position counsel refers to the doubtless accidental fact that the second proviso to section 34 of the Tram Railway Act was enacted March 27, 1867, while the Street Railway Act was passed March 5, 1867.

If this fact might have had some weight in construing the rights of the grantor companies under their original ordinances, which we deny, it certainly cannot have any effect under the extension ordinances of 1879, 1880 and 1885.

The limitation of the power of the city in the Tram Railway Act after 1867 was: that after the city had proposed its consent upon certain terms, and conditions, and the company had accepted them, the city was prohibited from any further action which would "deprive" the company "of the right of constructing, maintaining and operating such railway in the street in such consent or grant named *pursuant to the terms thereof.*"

The limitation in the Street Railway Act was plain and precise, i. e., that the city could not prescribe rates of fare,

but could only establish them by agreement with the company.

This contention also overlooks or puts aside the amendments of 1867 to the Tram Railway Act, in connection with the Street Railway Act of 1867, which must be construed *in pari materia* and the extensions and amendments to the ordinances enacted and adopted subsequent thereto, and is directly at variance with the decision of the U. S. Circuit Court of Appeals for the Sixth Circuit (Mr. Justice Jackson presiding) in Detroit Citizens' Street Railway vs. City of Detroit, 64 Fed. R., p. 629.

The Court held that the amendments to the Tram Railway Act in 1867 and the general street railway law of the same year being *in pari materia*, must be construed together, and that the ordinance of 1879 "became a binding and irrevocable agreement" (p. 631).

The Court, speaking through Judge Lurton, said:

> "This conclusion seems to rest the case upon the assumption that the power of the city to grant an easement is found alone in the Train Railway Act, and to exclude from consideration, in construing that act, the peculiar constitutional policy of the State, limiting the legislative power in the matter of direct interference with the purely local concerns of the cities and chartered villages of the State. It also excludes from consideration the general charter powers of the City of Detroit over its streets; *it fails to read, in connection with the Train Railway Act, the more elaborate Street Railway Act passed in 1867*, and in full force and effect when the extension ordinance was passed, and attaches little importance to the general purpose the Legislature had in view when it undertook to provide for the establishment of street railway companies. Any conclusion drawn alone from an artificial construction of the Train Railway Act, and which ignores in so large a degree the primary canon of construction which requires that effect shall be given to the intent of the law-making power, and that the intent shall be ascertained in every legitimate way, must bring about an unsatisfactory result (p. 639).
>
> The just, reasonable, and fair interpretation of the provision in each act requiring consent is that nothing in either act shall be construed as authorizing any such road to occupy the streets of any

city with its tracks and cars without first obtaining from such city the right of way necessary, which right may be granted to the city upon terms and conditions satisfactory to it and acceptable to the company, and that this consent to such construction and occupancy shall not be subject to repeal or alteration when granted and accepted."

"However this may be, we are of the opinion that these acts do directly confer power to consent to such use of streets, and that, when such consent is once given and accepted, it is irrevocable for the term fixed by the grant" (p. 643).

The opinion further declares that the rights of the complainant company were to be determined under the amending ordinance of 1879.

"That consent was to the grantees named and described, and their 'successors or assigns.' The ordinance of 1879 was not a new grant or a new consent; it was confessedly an extension of the old grant of consent, upon the terms and conditions of the old consent, except in so far as those terms were readjusted. It follows that the extension of that term was a grant to the Detroit City Railway Company and its successors and assigns. While, therefore, neither party supposed that it was in the power of the City Council to extend the corporate life or corporate franchises of the Detroit City Railway Company beyond the term prescribed in the law which gave it birth, yet it was supposed and believed by each that the value of the extended term would consist in its assignability to a grantee endowed with the franchises essential to the enjoyment of the city's consent to the use of its streets for street railway purposes."

As has been stated, this decision was sustained by this honorable Court and a writ of certiorari refused.

City of Detroit vs. Citizens' Street Railway Co., 163 U. S., p. 583.

And was held by the Supreme Court of Michigan to be res adjudicata to the City of Detroit for a mandamus to the Attorney-General to file a quo warranto against the company.

City of Detroit vs. Attorney-General, 103 Mich., p. 612.

IV.

All the claims of the city have been decided in favor of the complainant by the decisions of this Court and the United States Circuit Court of Appeals for the Sixth Circuit in previous litigation between the City and complainant.

The Corporation Counsel claims the city has authority to adopt the ordinances complained of upon the following grounds:

> 1. "The Common Council of Detroit possessed no authority to pass the various ordinances under which the complainant is operating its road, except such as was conferred upon it by express grant of the Legislature of the State of Michigan" (p. 8 of Mr. Tarsney's Brief).
>
> 2. "The terms employed in the various ordinances do not constitute a contract. The language employed to make a contract must be of such a clear and unambiguous character that it will admit of no reasonable construction consistent with the reservation of the power" (p. 37, *id.*).
>
> 3. "Franchises are always granted subject to the police power" (p. 61, *id.*).
>
> 4. "The police power cannot be delegated or bargained away, nor can the corporation by any contract hamper itself in the exercise of it" (p. 72, *id.*).
>
> 5. "The regulation of fares in the ordinances in question may be supported by the reserve power of alteration, amendment or repeal, contained in the constitution and statutes of Michigan" (p. 86, *id.*).

And in an unsigned addendum attached to the brief;

> that the ordinances granting the present rights in the streets to The Detroit City Railway, The Grand River Street Railway, and the Fort Wayne and Elmwood Railway are void because they amended the previous ordinances by general words and did not re-enact and publish them at length.

All these claims except the last are completely disposed of by the decision of the United States Circuit Court of Appeals for the Sixth Circuit, in a former suit between the city and the complainant, quoted from above, and the principles enunciated by this Court in the opinion in City Railway Company vs. Citizens' Railroad Company, 166 U. S., p. 653.

In the case first cited (64 Fed., 628) the city filed a bill in November, 1892, against the complainant company in this case for a mandatory injunction upon the Company to remove its tracks from the public streets and restrain its further operation of its street railway.

The claim for this relief was made on the ground that the grant of rights in the streets conferred in the ordinance of 1879 of the City of Detroit for thirty years from November 14th, 1879, was void and in excess of the power of the Common Council to grant or the Detroit City Railway to accept because the corporate life of the Detroit City Railway would expire in May, 1893.

The U. S. Circuit Court of Appeals for the Sixth Circuit held:

That the Detroit City Railway was capable of taking a grant of a right to use the streets of the city for its railway for a term extending beyond its own corporate franchise and that the interest granted was assignable (p. 628).

That under the amendments of 1861 to the Tram Railway Act of 1855 authorizing the organization of street railway companies with a proviso that no such company shall be authorized to construct a railway through the streets of a city without the consent of the municipal authorities and under such regulations and upon such terms and conditions as they might from time to time prescribe and the further proviso of 1867 that after such consent had been given and accepted such authorities should make no regulations or conditions whereby the rights or franchises so granted should be destroyed or unreasonably impaired or such company be deprived of the right of constructing, maintaining and operating such railway "in the streets in such consent named pursuant to the terms thereof," and the similar provisions in the general street railway act when construed together with the general charter powers of the City of Detroit; the "consent" required was not a merely implied power and therefore to be strictly construed, but was directly conferred, and authorized a grant of such easement of way in the streets as was requisite for the purposes to be accomplished, and as such power was conferred without express words of limitation and

the terms and conditions on which the grant was to be made were left to the discretion of the local government the term of such a grant was not necessarily limited by the duration of the franchises of the grantee (pp. 628, 629).

That the consent was to the grantees named and described and their successors or assigns. And the ordinance of 1867 was an extension of the old grant (of 1862) upon the terms and conditions of the old grant, except in so far as these terms were readjusted (p. 632).

That the extension of the term from 1893 to 1909 was the sole consideration for the assumption by the company of the new burdens imposed; was a sufficient consideration accepted in writing as required by law and "became a binding and irrevocable agreement."

In the course of the extended litigation in the case the right of the city to have compelled the company, without its consent, to sell eight tickets for twenty-five cents during certain hours of the day (to which the company had agreed in accepting the ordinance of 1879) became material in considering whether the city was estopped to allege the invalidity of the ordinance.

City of Detroit vs. Detroit Citizens' Street Railway, 60 Fed. R., pp. 161, 171.

The Circuit Court held, in an opinion by Taft, J.:

> "By Section 8 of the ordinance of 1862 it was provided that the rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance. By the ordinance of 1889 which reaffirmed the extension of the grant contained in the ordinance of 1879, it was provided that between the hours of 5:30 and 7:00 in the morning and between the hours of 5:15 and 6:15 in the evening, passage should be furnished upon tickets to be sold at the rate of eight tickets for twenty-five cents. These were known as working men's tickets. The tickets were voluntarily sold by the new companies at stations along the line. The ordinance of February 4, 1893, was passed to compel the sale of these tickets upon the cars. The company refused to obey and was prosecuted criminally at the instance of the city and fined three hundred dollars. After the validity of a similar ordinance had been sustained by the Supreme Court of the State, the company acquiesced and sold the tickets on the cars. I was at first in-

clined to the opinion that the provision in the ordinance of 1862 as to fares was a limitation upon the company only, and would not prevent a reasonable regulation of fares by the Common Council under Section 19 of the same ordinance."

"The argument of counsel for the company has convinced me that I was wrong, and that in the provision of Section 8 in the ordinance of 1862 there is a necessary implication, binding as a contract on the city, that the company may, if it chooses to do so, charge five cents for each fare. It therefore follows that the obligation upon the company to sell tickets at the rate of eight for twenty-five cents for passage during any hours of the day, was a change in the stipulation of the ordinance of 1862 and an additional obligation and burden upon the company imposed by the ordinance of 1889, which expressly reaffirmed the grant until 1909. It is clear, therefore, that the ordinance of February 4, 1893, compelling the sale of working men's tickets was a recognition by the city of the ordinance of 1889 and the strongest affirmation that it had the right to enforce against the new companies the obligations of that ordinance."

This decision expressly denied the power of the city to adopt an ordinance compelling the company to sell only *during certain hours* of the day the same kind of tickets which the ordinances in this case require shall be sold at all hours.

The case of the

City Railway Company vs. Citizens' Railroad Company, 166 U. S., 557,

like the case at bar, was a bill filed by the street railway company to restrain action by the City of Indianapolis under an ordinance adopted subsequently to that under which the company was operating its railway; like the case at bar, the complainant was the grantee of the original street railway company; like the case at bar, the terms of the original ordinance had been modified, and the term of the grant of rights in the street contained in the first ordinance had been extended; like the case at bar, the street railway act of Indiana, under which the street railway company was incorporated and the City of Indianapolis was acting in adopting the ordinances, con-

tained a reservation of the right to amend or repeal the law at any time. This court held:

1. That the United States Circuit Court had jurisdiction, although both parties were citizens of Indiana.

2. That the right of repeal reserved to the legislature in the street railway act of Indiana was not delegated to the city government.

3. That the Citizens' Railroad Company had a valid contract with the city which would not expire until January, 1901, and that the conflicting contract of the city with the City Railway Company was invalid.

In the opinion it is said:

"The original ordinance of January 18th, 1864, was plainly a proposition on the part of the city to grant to the company the use of its streets for thirty years in consideration that the lay its track and operate a railway thereon under certain conditions prescribed by the ordinance. This proposition, when accepted by the company, and the road built and operated as specified, became a contract which the State was not at liberty to impair during its continuance."

This language aptly describes the effect of the Detroit City Railway extension ordinance of 1879, and the similar extension ordinances of the Grand River Street Railway and the Fort Wayne and Elmwood Railway Company.

The validity of these Detroit City Railway ordinances of 1879 and 1887, as to the tax provisions, were raised by the city before the Supreme Court of Michigan in City of Detroit vs. Detroit City Railway Co., 76 Mich., 421; and again passed upon in Detroit Citizens' St. Ry. vs. Common Council, 85 N. W., 96, 106, and in same case on petition for rehearing, 86 N. W., p. 809.

In the first case the court held that the arrangement between the city and company as to taxes, in the ordinances of 1879 and 1887, was "a contract unequivocal that this privilege shall be in lieu of all city taxes except the land tax."

In the second case the court held: "When the city saw fit to make its easements and local taxes the subject of contract, the agreement bound both parties, and there is no reason for requiring the private corporation to live up to every promise of the contract and permitting the municipal corporation to disregard it at will. Such contract was made, and was as binding as though made by the legislature itself." (p. 106.)

Upon a petition for a rehearing of this case, the court said: "The City of Detroit made the repeal of the law

providing for the specific tax a ground for claiming the right to ignore the contract in relation to city taxes, and dissensions arose which led to a new arrangement. Thus, in 1887 the Detroit City Railway consented to an adjustment of the controversy by accepting a new ordinance, and this was passed upon in the case of the City of Detroit vs. Detroit City Railway, 76 Mich., 422.

"In 1885 the same thing had been done in the case of the Grand River Street Railway, and the tax has since been paid upon the basis of that arrangement. Now the city is again insisting upon a right to ignore its contract and increase the tax upon the property. We passed upon the question in our original opinion, but counsel ask a rehearing upon the ground that we overlooked the fact that the ordinance of 1887, relating to the Detroit Citizens' Railway, and that of 1885, relating to the Grand River Railway, are not identical in terms. Both had contract rights that were invulnerable under their original franchises. Both undertook to adjust contract rights by accepting new ordinances making new contracts, which this court in the case cited held might be done.

"The City of Detroit had granted contract rights which it disputed, and a compromise was made and new contract rights were created. The effect of counsel's contention is that, notwithstanding this new arrangement and the controversies that the parties sought to settle by it, the new contract really settled nothing and left the council the right to increase the tax at will by a new ordinance which might take effect as soon as the same could be adopted." 86 N. W., p. 809.

In Coy vs. Detroit & Ann Arbor Railway, 85 Nth. Wn. R., pp. 6, 8, the Supreme Court of Michigan, in determining the fare the railway company were authorized to charge, say: "If the Village of Wayne had authority to make a contract with the defendant (which does not seem to be questioned and which for the purposes of this case we take to be conceded), we know of no reason why it might not contract for a cent and a half rate the entire length of its line, and if it did so, any member of the public might claim the benefit of that rate."

V.

Under the statutory and municipal legislation when the complainant company was incorporated, and purchased the rights of the grantor companies in 1891, which was still in force in 1899, the City of Detroit had no power to regulate fares—they could be established only by agreement between the city and the company.

Much space in the brief of the Corporation Counsel for the defendants is devoted to the discussion of the proposition that the "Common Council of the City of Detroit possessed no authority to pass the various ordinances under which the complainant is operating its road except such as was conferred upon it by express" (or necessarily implied) "grant of the legislature of the State of Michigan." (Brief of Mr. Tarsney, pp. 8 to 37.)

It has been so held in express terms by the Supreme Court of Michigan in Street Railway Company vs. Detroit, 110 Mich., 390; and by this Court in Detroit Citizens' Street Railway Co. vs. Detroit Railway, 171 U. S., 48.

With this general proposition, we make no contention; but as a logical and necessary consequence it follows that the city had no power to adopt the ordinances of 1899, regulating the fares on street railways, unless "the same had been conferred upon it by the legislature, either in express terms or by necessary implication."

The case shows conclusively that the only power which the city had over the subject of street car fares in 1899, or has had since 1867, was the right, delegated in Section 20, "to establish the rates of fare *by agreement with the street railway company.*"

The sections preceding this one expressly reserve the power of the city to prescribe and regulate the manner of laying the tracks in the street; the kind of rails to be used; the grades at which the track shall be laid from time to time, and generally all matters affecting the public welfare and safety. Over all subjects which may be comprehended under the "police power" the statute reserves the city's right of regulation (in subordination, however, to the provisions of the Federal Constitution—(Lake Shore Railway vs. Smith, *ubi sup.*), but the subject of fares is left to an agreement between the company and the city.

The separation of these matters in such close apposition emphasizes the express words of the statute, and leaves no doubt whatever of the intention of the legislature.

It was intimated by counsel for the city, in the argument at the Circuit, that the words "and shall not be increased without the consent of such authorities," provide for an agreement on the part of the railway companies, but not on the part of the city.There is no merit in this contention.

An agreement is a meeting of minds. An agreement must be mutual. A prescribing or ordaining rates of fares, a fixing of rates of fares as an act of governmental power, is totally different. When the statute declares that as to all subjects which concern the public welfare and the safety of life and limb on the public streets, as well as passengers on the cars, the city shall have power to prescribe conditions and regulations, it refers to and defines the governmental powers of the city, and when, in the following sections, it declares that the rates of fare shall be established by agreement with the company, it makes them entirely a matter of contract.

There either is or is not an agreement. There cannot be in law an agreement which binds one party and does not bind another.

Since the amendments of 1867 to the Tram Railway Act and the Street Railway Act of the same year—for over thirty years—the City of Detroit and every municipality in Michigan treating with a street car company and every street car company, has construed the statute to make rates of fare a matter of agreement between the city and the company.

Every ordinance of the City of Detroit enacted since 1867 has in express terms required the consent of the company to the ordinance to be in writing. And upon the faith of this mutual construction of the statute and the ordinances, enormous sums of money have been borrowed by the street railway companies upon negotiable bonds and expended upon repairs, betterments and extensions of their lines of railroad.

VI.

Both the language of the statute directing the establishing of rates of fare by agreement between the city and the company and the language in the various ordinances describing the rates of fare are wholly unambiguous and unequivocal.

It scarcely seems necessary to elaborate this proposition.

The statute expressly says: "All rates of toll or fare * * shall be established by agreement between such companies and the corporate authorities of the city or village where the road is located and shall not be increased without the consent of such authorities."

The ordinances, to each of which the city required and obtained the consent of the street railway companies in writing expressly specified. "A single fare of five cents," or a "fare not exceeding five cents."

In the one case the exact fare is fixed, in the other the maximum fare is fixed.

VII.

The third and fourth subdivisions of the brief of counsel for the city contend "that franchises are always granted subject to the police power and that that power cannot be delegated or bargained away, nor can a municipal corporation hamper itself in its exercise."

It is a sufficient reply:

That the exercise by the city of the police power must be in subordination to the provisions of the Federal Constitution.

> Lake Shore R. R. vs. Smith, 173 U. S., 684, 689, 690.

Moreover, the subject matter of these ordinances, prescribing reduced fares to the purchasers of a certain number of tickets and giving additional transfer rides on tickets, is not within the police power.

As we think, we have clearly shown the power of the city in respect to fares after 1867 was limited to agreement with the company as to rates of fare. It is expressly so limited in the Street Railway Act and the

necessary implication of Sec. 34, Tram Railway law, is that the ordinances are to be contractual as respects fares. The city consents to the use of its streets upon certain terms and conditions which it proposes, but this "consent" does not become effective until the company shall have accepted the terms and conditions, and after such acceptance they are irrevocable. If these terms and conditions were intended by the legislature to be made in the exercise of governmental powers of regulation, why does the statute require the consent in writing of the company to them? Why do they so expressly provide that after the street car company has accepted the grant "the city shall not revoke such consent nor deprive the company of the rights and privileges so conferred?"

The Walla Walla case, 172 U. S., p. 2, 15, 17, holds:

"The police power is one which remains constantly under the control of the legislative authority and a city council can neither bind itself nor its successors to contracts prejudicial to the peace, good order, health and morals of the inhabitants, but it is to cases of this class that these rulings have been confined. But where a contract for a supply of water is innocuous in itself and is carried out with due regard to the good order of the city and the health of its inhabitants, the aid of the police power could not be involved to abrogate or impair it" (p. 17).

Under this express delegation of power from the State, in the street railway act and that necessarily implied in Sec. 34, Tram Railway Act, the limitation of the rates of fare by the city was a legitimate matter of contract and does not fall within the class of rights which the city may not bind itself from exercising.

These are such rights only as are public or governmental in their nature and are essential only to the protection of the health, safety and welfare of the citizen and the public convenience.

Cooley's Constitutional Limitations, p. 577.
Beach on Public Corporations, § 1248.
People vs. Jackson Plank Road Co., 9 Mich., 306.
Grand Rapids Railways, 43 Mich., 433.
Lake Shore Railway Co. vs. Ohio, 173 U. S., 285, 305.
Baltimore vs. Baltimore Trust Co., 166 U. S., 673.
City of Detroit vs. Railway Co., 95 Mich., 456.

A regulation designed to affect the city or the inhabitants in a financial way does not come within this class of powers.

City of Newport vs. Bridge Co., 8 L. R. A., 484.
City of St. Louis vs. Telephone Co., 96 Mo., 623.

In City of Newport vs. Newport Bridge Company, 8 L. R. A., the ordinance required the bridge company to issue one hundred tickets for $1.00. The bridge company did not issue such tickets, but in lieu thereof sold five cards, each good for twenty-five crossings, for $1.00. The city sought to enforce a literal compliance with the ordinance by a penal ordinance; held, that the enforcement of the ordinance would not be "an exercise of the police power," the Court saying: "While it is difficult, if not impossible, to concisely define the extent of this power, yet it certainly should not be extended so far as to permit a city to enforce its views of its contracts by penal ordinances in cases involving neither the morals, health nor safety of its people. The public welfare demands the existence of such a power and, when properly directed, the municipality should not be restricted to a narrow limit in its exercise. But when it is a matter of contract affecting merely the pockets of its citzens, or it financially, it must resort to the courts for relief in the same manner as individuals."

In City of St. Louis vs. Bell Telephone Company, 96 Mo., 623, it was held that while the State had the power to fix telephone rates and might delegate it to cities, it had not done so, either in the powers granted to regulate the use of its streets or under the "general welfare clause," "to pass all such ordinances not inconsistent with the provisions of this charter or the laws of the State as may be expedient in maintaining the peace, good government, health and welfare of the city, its trade, commerce and manufactures." The counsel for the city quotes freely and at length from many authorities, many of which give no support to his claims under the facts in this case and some of which are contrary to the great weight of authority both in the Federal and State decisions, such as the doctrine from Laurel Fork and Sand Hill R. R. Co. vs. West Virginia Transportation Co., 25 West Va., 324, quoted in paragraphs 4 and 5 on page 75 of brief of counsel—which is in direct conflict with Wabash Railroad Co. vs. Defiance, 167 U. S., 88, and other decisions of this Court cited in his brief.

Georgia R. R. & Banking Co. vs. Smith, 128 U. S., 174, is copiously quoted from by him, including that portion of

the opinion which expressly declares "that if the charter in this way (by contract embodied in its terms or necessarily implied by them) provides that the charges which the company may make for its services * * * shall be subject only to its own control up to the limit designated, exemption from legislative interference within that limit will be maintained."

In that case the State of Georgia had granted a charter to a railroad company, which contended that the sense of the charter was to give the railroad company the right to charge certain freight rates. Subsequently the Legislature passed a law creating a board with authority to fix rates for common carriers. That board prescribed lower rates than those claimed by the railroad company under the charter. The Supreme Court ruled that the charter was a contract which the subsequent act could not alter; but, upon examination of its provisions, held that the words of the charter did not have the meaning contended for by the railroad company.

The case of City of Indianapolis vs. Navin, 41 L. R. A., 337, differs materially from the case at bar. In it there was no contract between the State or the city and the street railway company as to any fixed rates of fare. A section of the statute provided "that the directors of such street railway companies shall have power to make by-laws * * * for regulating * * * the fare * * * of said road or roads."

Subsequently the Legislature re-enacted this section with a proviso that "in cities in the State having a population of 100,000 or more, according to the census of 1890, the cash fare shall not exceed three cents for any one trip or passage upon the street railroad or roads."

Held, that the city was not authorized to enter into any contract which would prevent the Legislature from legislating on the subject of fares; "that in order to exempt a common carrier from legislative control or its rates of fare, it must appear that the exemption was made in its charter by clear and unmistakable language inconsistent with the exercise of such power by the Legislature;" also that, irrespective of the right reserved in the statute to alter, amend or repeal the street railway act, the State had the general power to regulate fares.

This decision was dissented from by the United States Circuit Court for the District of Indiana, and the amending act held void by Showalter, J., in Central Trust Company vs. Citizens' Street Railway Company, 80 Fed. R., 218, reaffirmed in the same case after the decision of the State Court, 82 Fed. R., 1. The case was appealed and a

motion to dismiss the appeal was denied by the U. S. Circuit Court of Appeals for the Seventh Circuit. In the course of the opinion by Woods, C. J., it is said, referring to City Railway Company vs. Citizens' Street Railroad Company:

> "In view of this utterance, the soundness of which it is not for us to question, it cannot be said to be clear that the company is not right in contending that it has a vested right to charge a five-cent fare until the original period of thirty years and the additional period of seven years given by a later ordinance which the Supreme Court declared valid shall have expired."

On page 21 of the brief of the Corporation Counsel it is said: "It strikes me that the question involved in this controversy is settled in favor of appellants by the decision of this court in Freeport Water Company vs. City of Freeport, 21 Sup. Ct. Rep., 493."

The case at bar is clearly distinguishable from that case, which is officially reported in 180 U. S., 587. The opinion of the majority of the court by Mr. Justice McKenna expressly excepts from its conclusions and dissents from the claim that municipal corporations could not be invested with the power to bind themselves by an irrevocable contract not to regulate water rates. Citing Los Angeles vs. Los Angeles City Water Company, 177 U. S., p. 558, and Walla Walla vs. Walla Walla Water Company, 172 U. S., pp. 1, 7.

The case turned on the interpretation to be given the language of the statute conferring the powers upon the city with respect to water supply, and the section of the general incorporation act reserving to the general assembly "at all times" power to prescribe "such regulations and provisions as it may deem advisable, which regulations shall be binding on any and all corporations formed under the provisions of this act."

The reasoning of the opinion has no application to the case at bar.

1st. The statute of Illinois, April 10, 1872, which was in force July 1st, 1872, when the original ordinance was granted by Freeport city, expressly conferred upon the city the right to "fix the water rates by ordinance." And the court held this to mean a continuing power which the Legislature had not authorized the city to bargain away.

But in the case at bar there was

(a) No power in the City of Detroit in 1899 to "fix street railway fares." They could only "be established by agreement with the company." And

(b) The city had no power to revoke its previous consent or to deprive the company of the rights and privileges so conferred; but, on the contrary, it was expressly prohibited by the Michigan statute from so doing.

2nd. There is no statute of Michigan reserving to the Legislature any such broad powers of regulation of private corporations as are contained in the California statute, and, as we have seen, the reservation of the right to repeal, alter or amend contained in the statute was not delegated to the city.

In this connection we briefly call the attention of the Court to a material distinction between ordinances of cities for the supply of water or light, which are at all times necessary to all the citizens, and ordinances with reference to rates of fare on street railways which only directly concern the citizen when he becomes a passenger thereon.

These considerations and adjudications also dispose of the claim of the city's right to pass the ordinances in question under Section 19 of the ordinance of 1862 (Record, p. 30), reserving to the city "the right to make such further rules, orders and regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways."

VIII.

The reservation by the Legislature of the right to alter, amend or repeal, was not delegated to the city.

In the 5th subdivision of the brief of the corporation counsel it is claimed and argued at considerable length "that the regulation of fares in the ordinances in question may be supported by the reserve power of alteration, amendment or repeal contained in the constitution and State of Michigan."

This claim is conclusively denied by the decision of this court upon a similar state of facts in City Railway Co. vs. Citizens' Railroad Co., 166 U. S., 557, 563.

IX.

It is claimed by the city's counsel that because the amending ordinances of 1879, 1880 and 1885, which extended the original terms of the companies' rights in the streets, did not "re-enact and publish at length the orig inal ordinances, they are void."

It is difficult to treat this claim with respectful consideration.

In the language of this court in a similar case, in 166 U. S., p. 569:

> "In view of the large expenditures incurred by the company upon the faith of this ordinance, it is ill-becoming the city to set up its own want of power to make it."

As we have shown, more than eight millions of dollars have been borrowed by the company and expended on its property since 1879 upon the faith of the validity of these extension ordinances. The city has repeatedly recognized and affirmed them by amendatory ordinances imposing new obligations and liabilities upon the railway companies.

The very ordinances in question in this suit are drawn as amendments to these original ordinances.

Finally the amending ordinances fully complied with the charter provision in that they published and re-enacted the sections of the ordinances altered or amended.

The ordinance of 1862 provided as to the Detroit City Railway:

> "Section 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage." (Record, p. 30, foot.)

The extension ordinance of 1879, after repealing certain ordinances and requiring certain extensions of track and changes in basis of taxation, provided:

> "Section 5. The powers and privileges conferred and obligations imposed on the Detroit City Rail-

way by the ordinance passed November, 1862, and the amendments thereto, are hereby extended and limited for thirty years from date." * * * (Record, p. 36.)

Similar ordinances extended the terms of the original grants to the Fort Wayne & Elmwood Street Railway Company and the Grand River Street Railway Company. (Record, pp. 58, 74.)

We respectfully submit that the decree of the court below was correct and just, and ask that it be affirmed.

HENRY M. DUFFIELD,
Counsel for Complainant and Appellee.

MICHAEL BRENNAN and
JOHN C. DONNELLY,
Of Counsel.

APPENDIX.

AMENDMENTS TO MICHIGAN TRAM RAILWAY ACT.

Howell's (Mich.) Annotated Statutes, Vol. 1, p. 906, et seq.

§3525. Section 31. "The Legislature may at any time alter, amend or repeal this act, but such alteration, amendment or repeal shall not operate as an alteration or amendment of the corporate rights of companies formed under it, unless specially named in the act so altering or amending this act, nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers for any liability which shall have been previously incurred."

§3526. Sec. 33. "It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State." Added 1861.

§3527. Sec. 34. "All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them: Provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe." Added 1861.

In 1867 the last section was amended by adding a second proviso as follows:

"Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such rail-

way in the street in such consent or grant named, pursuant to the terms thereof."

§3529. Sec. 36. "In the articles of association of any company formed for the construction and operating of a street railway in any city, it shall be a sufficient designation of the route or routes thereof to declare that said railway is to be constructed and maintained in such streets or public ways of the particular city as has been or shall thereafter from time to time be granted to said company for that purpose by the proper municipal authorities of such city; and it shall be lawful to build, maintain or extend the railway of such company according to the terms or conditions of such grant or grants. Any such company heretofore organized may amend its articles of association to conform to this section, in the manner hereinafter provided for amendments." Added 1867.

§3535. Sec. 42. "All the provisions of this act, as amended, shall be applicable to all corporations now organized under this act, as though specially named." Added 1871.

"SECTIONS OF STREET RAILWAY ACT MATERIAL TO THIS CASE."

Howell's Annotated Statutes, Vol. 1, p. 908, et seq.

§3548. Sec. 13. "Any street railway corporation organized under the provisions of this act may, with the consent of the corporate authorities of any city or village, given in an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in

and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof shall be recorded by the township clerk in the records of his township."

§3549. Sec. 14. "After any city, village or township shall have consented, as in the act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

§3550. Sec. 15. "Any street railway company may also purchase and acquire, either at public or at private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township, owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road and may use and enjoy the rights, privileges and franchises of such company, the same and upon the same terms as the company whose road and franchises were so acquired might have done. Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway, fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage, whenever the corporation shall deem it expedient so to do."

§3555. Sec. 20. "The rates of toll or fare which any street railway company may charge for the transportations of persons or passengers over their road, shall be established by agreement with such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

§3564. Sec. 29. "All companies and corporations heretofore organized in this State for the purpose of

building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

§3565. Sec. 30. "All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons or passengers, in any city or village, shall be organized under the provisions of this act, and shall be subject to the provisions of chapter seventy-three, of the Compiled Laws of this State, and to all general laws of this State, relating to corporations, so far as the same may be applicable to corporations formed under this act, and the legislature may alter and amend, or repeal this act at any time."

Office Supreme Court U.S.
FILED
OCT 14 1901
JAMES H. MCKENNEY
Clerk.

By. of Brennan & Donnelly for Appellee.

SUPREME COURT OF THE UNITED STATES.

Filed Oct. 14, 1901.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor,
CHARLES FLOWERS, Corporation Counsel,
Defendants and Appellants,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant and Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

OCTOBER TERM, 1901.

No. 152.

BRIEF OF M. BRENNAN AND JOHN C. DONNELLY FOR APPELLEE.

DETROIT:
Record Printing Co., Free Press Bldg., 11 and 13 Lafayette Ave.
1901.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor,
CHARLES FLOWERS, Corporation Counsel,
Defendants and Appellants,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant and Appellee.

BRIEF OF M. BRENNAN AND JOHN C. DONNELLY FOR APPELLEE.

From 1862 to August, 1899, the complainant and its assignors exercised, unquestioned, the right to charge a five cents fare for the carriage of passengers on its street railway lines in Detroit in accordance with the terms of various original and supplementary contracts entered into between the assignors of complainant and the City of Detroit, all of which are hereinafter more fully set forth. This right to charge five cents also contained the important qualification that certain of the lines owned and operated by complainant were, by the various ordinances and contracts referred to, designated as independent routes over each of which it was entitled to charge the full fare of five cents. Its lines were not all acquired from the same grantor company, nor was the right to construct and operate all of the lines which it owned granted, in the first instance, to the same company, or under the same ordinance. In addition thereto, in the original grant, certain routes were laid out and designated, over each of which the complainant and its assignors were entitled to charge the full fare of five cents, and a passenger taking passage on any one of these routes, or upon any one

of the independent lines acquired from other companies, if he desired to travel beyond that route or line and upon some other route or line, he could only do so upon the payment of a second fare, except as modified as hereinafter set forth by supplemental agreement between the city and the company.

In August, 1899, the City of Detroit, through its Common Council and Mayor, acting in their legislative capacity, and without the consent of the company, adopted certain ordinances which are fully set forth in the bill of complaint, by which it was undertaken to compel the complainant to carry passengers at a rate of fare of eight rides for 25 cents, and abolishing the distinction as to routes and lines, and to compel the company, at the reduced rate of fare, to give universal transfers, so-called. These attempts to reduce the rates of fare and compel transfers were not in the form of conditions attached to any new grants or consents from the city to the company then made, but were wholly independent legislative enactments, compulsory in their character, and were assumed to be enacted by the city by virtue of authority from the State, and as the representatives of the State.

This case, therefore, involves the question of the power of the Common Council of the City of Detroit, in its legislative capacity, to abrogate the existing agreements and reduce the rates of fare for the carriage of passengers by the street car company, without the consent of the company.

A clear understanding of the case thus presented can be obtained by first setting forth briefly the provisions of the various ordinance contracts which were from time to time entered into between the City of Detroit and the appellee and its grantors touching the question of the rates of fare, supplemented by a statement of the provisions of the Michigan statutes touching the question of the authority of the city to deal with the subject matter of the rates of fare to be charged by street railroad companies.

ORDINANCE CONTRACTS.

By the terms of a grant made by an ordinance approved November 24th, 1862, the Detroit City Railway obtained the right to construct, maintain and operate street railways through Jefferson, Michigan, Woodward, Gratiot and Grand River avenues; and Witherell, Brush or Beaubien, Fort street west, Third street and some other minor streets in the City of Detroit for the carriage of passengers. (Record, 27-35.)

Section 8 of the grant provided as follows:

> "The rate of fare for any distance shall not exceed five cents in any one car or on any route named in this ordinance except where cars or carriages shall be chartered for specific purposes: Provided cars so chartered shall not be considered regular cars within the meaning of the preceding section." (Rec., 29.)

The routes referred to in the foregoing section were fixed by Section 5 of the grant, which reads as follows:

> "The routes of all said railways shall commence in the Woodward avenue road at Campus Martius, from thence running on their several courses to the outer limits of the city: Provided, that in collecting fare those portions between Atwater, through Brush or Beaubien streets and through Woodward avenue to Jefferson avenue, and between Brush and Beaubien or Third streets and Jefferson avenue and Woodbridge street shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time shall pay only one fare."

It will thus be seen that the lines on Jefferson, Gratiot, Woodward, Michigan, those being the only ones built under that grant, were each fixed by Section 5 as separate and distinct routes, on each of which the company was entitled to charge a single fare for the carriage of a passenger; and a passenger paying such fare was not entitled to a transfer ticket by which he could ride free of charge over any other route than the one on which he had taken passage. These provisions remained without modification or change until 1889, when certain changes were agreed to by the company and the city which will be hereinafter referred to.

By the terms of the grant of 1862 the powers and privileges conferred by the grant were assumed to be limited to thirty years from and after the date of the grant (Section 20). From time to time thereafter prior to 1879 the company was authorized to extend its tracks and to change to double tracks on several of its routes, all subject to the provisions of the original grant in so far as they applied.

On November 14th, 1879, as the result of negotiations between the city and the company having for their objects the readjustment of the fiscal relations between the city and the company and the continuation of the original grants, an agreement (Record, 35) in the form of an ordinance was entered into by which the various rights and privileges theretofore granted to the company were extended for a period of thirty years from that date by the following provision:

> "Section 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance of November 24th, 1862, and the amendments thereto are hereby extended and limited to thirty years from this date." (Record, 36.)

It appears that prior to this time, under the terms of two grants, one to the Detroit and Grand Trunk Junction Street Railway Company; and the other to the Central Market, Cass Avenue and Third Street Railway Company, street railways had been built and were on November 14th, 1879, in operation on certain other streets than those on which the Detroit City Railway was maintaining and operating street railways, and those other lines having been acquired by that company, it was agreed in the contract of November 14th, 1879, that the grants to the two companies mentioned should be cancelled and that thereafter those lines should be operated under the provisions of the grant to the Detroit City Railway.

After 1879, down to and including January 3rd, 1889, various additional grants of new routes were made by the city to the company, notably Trumbull avenue and Brush street, and also various extensions of other routes, all of which were subject to the provisions of the original grant as extended by the contract of November 14th, 1879. (Record, pp. 36-44.)

On the 3rd January, 1889, the city granted to the company the right to construct and maintain a route on Congress street east to Brush, on Brush to Fort street east; thence on Fort street east to Mt. Elliott avenue and Jefferson avenue to the easterly limits of the city; also on Cass avenue from Ledyard northerly to the Detroit and Bay City crossing; and also to extend its double track on Jefferson avenue to the easterly city limits, which at that time had been extended considerably east of the point at which it was when the former grants were made. Also to double its track on Gratiot avenue to the new easterly

city limits; and on Mack street from Gratiot to the easterly city limits; also to connect Michigan avenue and Gratiot avenue lines so as to make them one route. (Record, 44-47.)

Section four of this grant provided as follows:

"Section 4. The above mentioned additional lines shall be operated in conection with and as part of the present system of the Detroit City Railway, but the permission and authority hereby given shall be inoperative and void unless the said Detroit City Railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to-wit:

"a. It shall carry passengers from its Cass Avenue and Third Street, Trumbull Avenue, Michigan Avenue and Congress and Baker Street lines to any point on the proposed line on Fort street east or to the easterly terminus thereof for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

"A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets shall be entitled to be transferred at Fort street to and conveyed by cars run on the proposed line on Fort street east to any point on said Fort street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point of said Gratiot and Michigan Avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to the said Chene Street line and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to be transferred at Chene street to said Chene Street line and to be carried to any point therein in one continuous trip.

"b. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride from said Gratiot Avenue line and proposed lines on Chene street, and Fort street to the Belle Isle Bridge, and from the Belle Isle Bridge in a reverse direction over the Fort Street, Chene Street and Gratiot Avenue lines for a single fare of five cents for one continuous trip."

"c. It shall arrange for and carry out an interchange of traffic of the Michigan and Gratiot Avenue lines either by transfer of passengers or by running other cars so that passengers will be carried from any point on either of said routes to any point on the other for a single fare of five cents for one continuous trip.

"d. Such arrangement shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning, and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon over any of its lines in said city for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents for one continuous trip with all the rights of transfer and through carriage provided for in paragraphs a, b and c in this section." (Rec., 46-47.)

It clearly appears from these provisions that the city and the company then understood that the fare could only be reduced and transfers obtained by the consent of the company, and that the city could not by independent adverse action compel such reduction or the granting of such transfers. It will be noted this contract definitely declares the fare to be five cents.

No further changes were made in the relations between the city and the company so far as the lines constructed under the grants hereinbefore recited were concerned. The Detroit City Railway continued to maintain and operate the various lines constructed by it under the various grants until 1890, when it conveyed all of them, with the rights and franchises attached thereto, to the Detroit Street Railway Company, which in turn in 1891 conveyed the same to the complainant in this case.

GRAND RIVER RAILWAY.

On May 1st, 1868, the city granted to the Grand River Street Railway the right to construct and operate a line of railway on Woodward avenue, from Jefferson to Grand River avenue and thence on Grand River avenue to the Michigan, Southern and Detroit, Monroe and Toledo Railway tracks.

By Section 6 of the grant it was provided as follows:

> "The rate of fare for any distance shall not exceed five cents in any one car or on any one route named in this ordinance except where cars or carriages shall be chartered for specific purposes; provided, cars so chartered shall not be considered regular cars within the meaning of the preceding section." (Record, 52-57.)

The railway authorized by this grant was constructed by the grantee and put in operation.

By section 19 of the grant, the powers and privileges conferred thereby were apparently limited to thirty years from the date of the grant.

By a grant dated June 27th, 1885, the Grand River Street Railway was authorized to construct an additional street railway in the following terms:

> "Section 1. Subject to all and every of the provisions, regulations and requirements of Chapter 52 of the Revised Ordinances of the City of Detroit for 1878 and the amendments thereof (Chap. 52 is the original Grand River Street Railway grant just referred to), consent, permission and authority are hereby given to the Grand River Street Railway Company to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables, on and through Myrtle street in the City of Detroit and the same to keep and maintain and operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance and the amendments thereto, to wit, connecting with and joining Grand River Street Railway Company track at the inter-

section of Myrtle street and Grand River avenue and running thence westerly on and through Myrtle street to Mt. Hope avenue."

"Section 2. The said company shall run through cars on the route described from the westerly terminus on Myrtle street to the intersection of Woodward and Jefferson avenues, and the rate of fare over such route shall be five cents." (Record, 57.)

By a grant approved January 3rd, 1889 (Record, 59), the Grand River Street Railway was authorized to construct a street railway through Grand River avenue; also a single track railway on Crawford street from Grand River northerly to the Detroit & Bay City crossing; also through Congress street east to the easterly limits of the city; and thence over the tracks of the Detroit City Railway along Mt. Elliott and Jefferson avenue to the Boulevard.

The lines thus authorized were to be operated as part of the existing system of lines of the Grand River Street Railway.

Section 3 provided as follows:

"The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration for the permission hereby granted the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle street and Grand River avenues to the northerly terminus of its line on Crawford street or any point on any of its said lines to any point on its line on Congress street east or to the terminus thereof for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any of its said lines on Grand River, Myrtle or Crawford streets; also for a continuous trip from any point on the lines of its said railway to any other point on the lines of said railway for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight for twenty-five cents, said tickets to be good

> for transportation over the entire route of said company or any portion thereof traveling continuously either way when offered for fare by persons taking passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning, and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon." (Record, 59.)

The Grand River Street Railway continued to operate the various lines of railway until 1890, when it conveyed the same with all the rights pertaining thereto to the Grand River Railway Company, which in turn conveyed the same in 1891 to the complainant.

FORT WAYNE & BELLE ISLE RAILWAY CO.

By a grant approved January 31st, 1865, the City of Detroit granted to the Fort Wayne & Belle Isle Railway Company the right to construct, maintain and operate what was known as the Fort street west and Croghan street line. (Record, 70-74.)

Section 8 of the grant provided as follows:

> "The rate of fare for any distance shall not exceed five cents in any one car on said route except when cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall be so designated by placards and shall not be considered regular cars within the meaning of the preceding section." (Record, 72.)

By section 20 of the grant the powers and privileges conferred were apparently limited to thirty years from the date of the grant.

By an agreement entered into June 30th, 1880, this agreement was extended for a period of thirty years from that date, such extension being apparently the result of negotiations concerning the fiscal relations between the city and company. (Record, 74.)

By various grants of June 27th, 1885; July 24th, 1886, and December 22nd, 1886, the Fort Wayne & Belle Isle Company was authorized to make certain extensions of the route named and to double track portions of the route. (Record, 75-76-77-78.)

Section 2 of the grant of July 24th, 1886, is as follows:

> "Section 2. The rate of fare for any distance on said Fort Wayne & Elmwood Railway, including the extension authorized by this ordinance, shall not exceed five cents in any one car, except when cars or carriages shall be chartered for any specific purposes: Provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of Section 7, Chapter 99, Revised Ordinances of 1884 of the City of Detroit." (Record, 77.)

By the terms of the agreement made December 22nd, 1886, and subject to the provisions of the existing agreement, the Fort Wayne & Elmwood Railway Company was authorized to construct and maintain additional railway track as a part of its existing system as follows:

> "Commencing at and connecting with the present easterly terminus of the street railway track of said company at the junction of Croghan street and Elmwood avenue, running thence upon and along Elmwood avenue to the intersection of that avenue and Fort street, thence along La Fayette street to a point thereon not less than thirty feet nor more than 100 feet west of the limits of the Boulevard on Frontenac avenue." (Record, 77.)

By section 2 of that grant additional provisions, regulations and requirements were made as to the operation of the lines of the Fort Wayne & Elmwood Railway Company, the third subdivison of the section being as follows:

> "Third. The street railway track heretofore laid and constructed by said company under the provisions of the several ordinances mentioned in section 1; and the street railway tracks authorized to be laid and constructed by this ordinance, when complete shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof at or within the city limits; and from thence running along the line of said railway as heretofore hereby or hereunder established to the Boulevard or Frontenac avenue, and in collecting fare, the whole of said distance shall be deemed one route and each passenger traveling the same continuously either way over the whole or any portion thereof shall pay only one fare, the amount of which shell be five cents." (Record, 77-78.)

By grant approved August 20th, 1888, the Fort Wayne & Belle Isle Railway Company was authorized to extend its track on Champlain street from the Boulevard easterly to the city limits, and section 2 thereof, including the third subdivision thereof, is a literal re-enactment of section 2 of the grant of December 22nd, 1886, just recited. (Record, 80.)

By the terms of a grant approved January 3rd, 1889 (Record, 81), the Fort Wayne & Elmwood Railway Company (being the same company as the Fort Wayne & Belle Isle Railway, the name having been changed) was granted the right to construct and operate a single track road along Champlain street from Randolph street to Elmwood avenue, there connecting with its then existing track, and on Mt. Elliott to Fort street, and in Fort street to Baldwin avenue, and on Baldwin avenue to Champlain; also certain tracks to reach the bridge. The route around and through Cadillac Square to Bates street and Randolph was also changed, the effect and purpose of the grant being to make what had theretofore been a single track route from Woodward avenue easterly along Croghan street, a loop line, operating on Champlain and Croghan streets. This grant was made subject to the terms and provisions of all of the existing grants from the city to the Fort Wayne & Elmwood Railway Company.

As above stated, the name of the Fort Wayne & Elmwood Railway was changed by amendment to that of the Fort Wayne & Belle Isle Railway Company, and that company continued to operate the various lines of railway recited until 1898, when it conveyed the same with all rights relating thereto to the Detroit, Fort Wayne & Belle Isle Railway, which company now owns the same, it having leased the same in March of this year to the complainant in this case; and the same are now being maintained and operated by the complainant.

It is thus, among other things, seen from the recitals of the provisions from time to time agreed upon between the city and the several street railway companies that the language of the clauses relating to rates of fare has been changed to a direct statement that the rate of fare should be five cents.

We think it is quite clear that the provisions stating that the rate of fare should not exceed five cents was an agreement that the company might charge five cents for the carriage of a passenger over any of the routes, but if any doubt existed as to that it has been entirely removed by the changes shown.

RESERVATION IN GRANTS.

Inasmuch as it may be claimed that the action of the defendant in the passage of the ordinances in litigation is permitted by what is known as the reserve clause in the various grants, it may be well to call the attention of the Court specifically to them.

Section 19 of the grant of November 24th, 1862, is as follows:

> "It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways." (Record, 30.)

Section 7 of the grant of November 14th, 1879, re-enacting and extending the grant of November 24th, 1862, is as follows:

> "The right to amend or repeal this ordinance in case of its violation by said company or companies is expressly reserved." (Record, 36.)

Under the Michigan decisions this clause could be acted on only after a judicial determination that the same had been violated.

> F. & F. Plank Rd. Co. vs. Woodhull, 25 Mich., 99.
> Cooley's Constitutional Lim. (4 Ed.), 340.

Section 3 of the grant of January 5th, 1885, authorizing the Brush Street line is as follows:

> "It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the Common Council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway." (Record, 39.)

Section 3 of the Trumbull Avenue line grant of July 31st, 1865, is a literal copy of the one last quoted. (Record, 40.)

Section 6 of the grant of January 3d, 1889, authorizing East Fort Street, Chene Street, Cass Avenue, Jefferson

Avenue double track, Gratiot Avenue, Mack Street, and providing for a system of transfers and workingmen's tickets is identical in language with the foregoing quotations. (Record, 47.)

Section 18 of the grant to the Grand River Street Railway of May 1st, 1868, is as follows:

> "It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, welfare or accommodation of the public in relation to said railways." (Record, 56.)

The same reservation was contained in Section 4 of the grant of June 27th, 1885, of the Myrtle Street route. (Record 57.)

Also in Section 3 of the grant extending the line on Grand River of August 3d, 1888. (Record, 59.)

Section 19 of the grant of January 31st, 1865, to the Fort Wayne & Belle Isle Company is as follows:

> "It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways." (Record, 73.)

This clause was not inserted in any other of the Fort Wayne and Belle Isle grants, but all subsequent grants were made subject to the terms of the original grant as amended.

II.

STATUTORY PROVISIONS.

It appears that the Detroit City Railway, the grantee in the original grant of November 24th, 1862, was incorporated under Chapter 94 of Howell's Annotated Statutes, commonly known as the Train Railway Law. (Record, Bill, 3—Answer, 107.) Also that the Fort Wayne & Elmwood Railway Company, the grantee in the original grant of January 31st 1865 was also incorporated under the Train Railway Law; and that the Grand River Street Railway, the grantee in the original grant of May 1st,

1868, was incorporated under the same act (Record, Bill, 6—Answer, 109); and it is but fair to assume that the original grants were made to those several companies by authority of the provisions of the Train Railway Law. The Detroit Street Railway Company, the successor of the Detroit City Railway; the Grand River Railway Company of the Grand River Street Railway, the Detroit, Fort Wayne & Belle Isle Railway and the Detroit Citizens' Street Railway Company, the successor to the two first named companies and the lessee of the last named company was incorporated under the provisions of Chapter 95 of Howell's Annotated Statutes, and commonly known as the Street Railway Act, which was enacted during the legislative session of 1867. As will hereafter appear, it becomes necessary in considering the rights of the complainant to consider the provisions of both of the laws mentioned, and especially those provisions referring to the power of the city to deal with the question of the rates of fare for the carriage of passengers.

a. TRAIN RAILWAY LAW.

As originally enacted, the Train Railway Law had in contemplation only the construction of freight roads over which any persons owning cars fit for operation on such a track or road might operate such cars. The only provision contained therein touching the question of tolls, simply contemplated the erection and maintaining of toll houses somewhat after the method of the ordinary plank road at which the persons owning and operating the cars on the track would be required to pay certain toll. The Act provided the rate of toll which might be collected, which was charged upon the tonage and mileage basis, and the provision in regard thereto can have no application to the toll or rates of fare to be charged for the transportation of passengers on street railways in cars owned by the street railway and operated on the tracks the right to the use of which is vested exclusively in the railway company.

This Act was amended in 1861 by adding therto the following sections:

> "Section 33. It shall be competent for parties to organize companies under this Act to construct and operate railways in and through the streets of any town or city in this State."

> "Section 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them, Provided that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

In 1867, Section 34 was further amended by adding the additional proviso, as follows:

> "Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the streets in such consent and grant named pursuant to the terms thereof."

It will be be noted that the last proviso was inserted in the act at the same session and practically simultaneously with the enactment of the Street Railway Law, to which more extended reference will be made.

At the legislative sessions of 1863, 1867 and 1871, several amendments were made to this act, but none have any reference to the matter under discussion. The most of them have distinct reference to freight rates for the incorporation of which the act was originally passed. So far as street railways are concerned, Chapter 94 does not contain any provision touching specially upon the question of the rates of fare for the carriage of passengers, and until 1867 there was no statute in Michigan which specifically bore on that subject. The law remained in this condition until the passage in that year of what we have heretofore styled "The Street Railway Act," which is contained in Chapter 95 of Howell's Annotated Statutes. This Act contains a number of provisions bearing on or pertinent to the matter in controversy here.

b. STREET RAILWAY ACT.

This Act in general terms provides for the incorporation of street railway companies proper. The manner of incorporation and the general provisions with reference thereto do not differ materially from those contained in the numerous incorporation acts to be found on the statute books. The provisions of the act having more direct reference to the question here are as follows:

> "Section 13. Any street railway corporation organized under the provisions of this Act may with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent, but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof shall be recorded by the township clerk in the records of his township.
>
> Any company organized under the provisions of this act, may construct, use, maintain and own a street railway for the transportation of passengers, in and along the streets and highways of any township, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township."
>
> "Section 14. After any city, village or township shall have consented as in this act provided to the

construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

Section 15 provides that any street railway company may purchase and operate any existing line of road owned by any other corporation or company with all the rights, privileges and franchises thereof, and may use and enjoy the same as though it had originally constructed the same.

"Section 20. The rates of toll or fare which any street railway may charge for the transportation of persons or passengers over their road shall be established by agreement between said company and the corporate authorities of the city or village where the road is located and shall not be increased without the consent of such authorities."

"Section 29. All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force shall have the same powers, rights, protection and privileges and shall be subject to all of the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

Section 30 provides that all companies and corporations thereafter formed for street railway purposes must be organized under this act.

It will be noted that when the original grant to the Detroit City Railway was re-enacted and extended on November 14th, 1879, and the original grant to the Fort Wayne & Elmwood Railway Company was re-enacted and extended in 1880, and the original grant to the Grand River Street Railway was re-enacted and extended in 1885, the provisions of the Street Railway Act just quoted were in force and by the express terms thereof the original grantees though incorporated under the Tram Railway Act, became entitled to the benefit and protection of all of the provisions of the Street Railway Act.

The same is true as to all of the subsequent grants made by the city to the various companies named, so that assuming that the contract of November 14th, 1879, operated in law as a re-execution or renewal of the original agreement between the Detroit City Railway and the city

for a period of thirty years from that date; and that the agreement of 1880 between the Fort Wayne Elmwood Avenue Railway and the City of Detroit operated as a re-execution and renewal of the original agreement between them; and that a like agreement made with the Grand River Street Railway operated as a re-execution and renewal of the original agreement between that company and the city, it is quite clear that such re-execution and such renewal were subject to the terms of the Street Railway Act, and those companies thereby became entitled to have those agreements so renewed and re-executed construed and enforced according to the provisions of the Street Railway Act.

Section 15 of the Street Railway Act is as follows:

> "Section 15. Any street railway company may also purchase and acquire at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township owned by any other corporation or company, together with the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights, privileges and franchises of such company and upon the same terms as the company whose road and franchises were so acquired might have been. Every railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage whenever the corporation shall deem it expedient so to do."

This section is quoted for the purpose of placing before the Court the status of the complainant as the purchaser and lessee of the various railway lines as set forth in the bill. The acquisition by purchase or leasing and the operation of these lines by the complainant does not change their character, or deprive the complainant of the right to operate them as wholly independent from the ones which it formerly owned. The fact that the complainant at the time of its lease and at the present time owns and operates other street railroads in the city does not entitle the city to treat the Detroit, Fort Wayne & Belle Isle

Railway lines as a part of the original system, and the same condition exists as to the Grand River Railway lines, except that they were acquired by purchase instead of by lease.

III.

The following propositions seem to us correctly to state the law of this controversy and, if sound, dispose of the claim of the defendant that the ordinances in controversy are valid:

1. That the effect of the agreement of November 14th, 1879, between the city and the Detroit City Railway was to re-execute or renew and extend the original contract existing between the parties.

That the agreement of 1880 between the Fort Wayne & Elmwood Company and the city operated as a re-execution and extension of the original contract between those parties.

And that the agreement of 1885 between the Grand River Railway Company and the City of Detroit had the like effect upon the relations between those parties. That so far as the rights of the parties were concerned it is the same as though they had in substance ignored the existence of the original contracts and had simply made new contracts containing the same provisions for the purpose of defining the rights, duties and obligations of the parties from thence forward.

2. That the Street Railway Act, being in force at the time of the making of such new contracts, the provisions thereof apply. and by operation of law became a part of the agreements, and the rights of the parties and their powers and obligations in the making of such contract must be construed with reference to the Street Railway Act.

3. That as matter of general law and in the absence of any statutory provision touching the matter, grants by the city to the company were executed contracts. The relations between the parties established thereby were contractual, in so far as the substantial rights of the company were concerned; and this is especially so with reference to the substantial elements of the right to construct, maintain and operate the road and the right to collect the rate of fare agreed upon for the carriage of passengers

thereon. It is emphatically so under the provisions of our statutes, the Street Railway Act in express terms making the matter of the regulation of the rates of fare a subject for agreement alone between the city and the company; and in express terms removing it from the domain of legislation.

4. The reservations contained in the various ordinances by which the city retains the right to make further rules and regulations were not intended and cannot be construed to have the effect of giving the city the right to interfere with or lessen the substantial rights of the companies, nor can the language be construed as giving to the city, with the consent of the company, the right to treat as a matter of legislation the rate of fare, which by the terms of the Street Railway Law is expressly made a matter of agreement, in the making of which the company is one of the contracting parties.

5. The city does not possess generally the power to regulate rates of fare for the transportation of persons or property, the Legislature not having delegated such power to it.

6. That by the terms of the various agreements the right to charge a fare of five cents was granted to the various companies; it matters not whether the language be that the rate of fare shall not exceed five cents, or that the rate of fare shall be five cents. The right of the company to charge the full maximum rate cannot be taken away by the city under assumed authority from the Legislature. Such right is one resting in contract, and the action of the city in assuming, in its legislative capacity as the representative of the State, to compel the company to accept a less rate of fare and to furnish transfers or free rides on other routes is an impairment of the contract right, and therefore void under the Constitution of the United States.

A. As to the effect of the extending or renewal contracts, the Court is referred to the decision of the Court of Appeals for this Circuit in the case of the City of Detroit vs. Detroit Citizens' Street Railway Company et al., 12 C. C. A., page 368, in which the Court is discussing the grant of November 14th, 1879, hereinbefore referred to. They use the following language:

> "The ordinance of 1879 was not a new grant or a new consent; it was confessedly an extension of the old grant or consent upon the terms and condi-

tions of the old consent, except in so far as those terms were readjusted. It follows that the extension of that term was a grant to the Detroit City Railway Company and its successors and assigns."

B. In support of the second proposition of law above made, namely that the Street Railway Act, being in force at the time of the making of the new contracts in extension of the rights of the company, such Street Railway Act became a part of the charter of the existing tram companies and by operation of law a part of the agreements and the rights of the parties, and their powers and obligations must be measured by the terms of that act. The Court's attention is respectfully called again to the case last above cited. The question under discussion at that time was whether the agreement or extension of November 14th, 1879, was valid, it being claimed by the city that because the term was extended a period of sixteen years beyond the corporate life of the grantee, that the excess sixteen years was void as being beyond the power of the city to make the grant, and of the company to take. The argument for the city was based upon the absence of any provision of the Train Railway Law authorizing such a grant.

After giving the history of the provisions of the Train Railway Act authorizing street railways; and of the Street Railway Act of 1867, and quoting the various provisions that I have heretofore cited, the Court proceeds:

> "That the Street Railway Acts cited heretofore do confer the power, grant and easement, as conceded by the learned counsel for the city. That this power is not expressly limited as to the term for which such grant may be made is also conceded. Their contention is that the power under which any easement may be granted is not an express power, but implied only from the power granted 'to consent to the operation' of the charter franchises; that a power arising only from this power 'to consent' is necessarily limited by the duration of the franchise consented to. This conclusion seems to rest the case upon the assumption that the power of the city to grant any easement is found alone in the Train Railway Act and to exclude from consideration in construing that act the peculiar constitutional policy of the State limiting the legislative power in the matter of direct interference with the

> purely local concerns of the cities and chartered villages of the State. It also excludes from consideration the general charter powers of the City of Detroit over its streets. It fails to read in connection with the Train Railway Act the more elaborate Street Railway Act passed in 1867 and in full force and effect when the extension of the ordinance was passed, and attaches little importance to the general principles the Legislature had in view when it undertook to provide for the establishment of street railway companies. Any conclusion drawn alone from an artificial construction of the Train Railway Act and which ignores in so large a degree the primary canon of construction which requires that effect shall be given to the intent of the law making power, and that that intent shall be ascertained in every legitimate way must bring about an unsatisfactory result."

On page 275, referring to the Train Railway Act and the Street Railway Act the Court says:

> "These two acts were both in full force and effect at the date of the extension of the ordinance of 1879 and are the acts which the Circuit Court construed as conferring only an implied power to grant an easement or way."

At another point, page 377, referring to the claim that much weight was attached by the counsel for the city in that case, to the effect that the authority of the city to consent to the Train Railway Act was in the form of a proviso, and was relied upon somewhat by the Circuit Judge in rendering his opinion, the Court of Appeal says:

> "The learned Circuit Judge seems to have attached much weight to the fact that this provision constitutes a proviso, for he says: 'The office of a proviso is usually that of a limitation. It here introduces a limitation in two ways; first, by making the franchise operative only on consent of the city; and second, by allowing the city, in giving its consent to surround the exercise of the franchise with such further limitations as it may choose to impose.'
>
> "While the ordinary purpose of a proviso is one of limitation, yet it is not always the case. It sometimes operates to broaden an act, and often introduces by way of abundant or excessive caution.

> Provisos should be strictly construed and their effect ascertained from a general view of the act to which they are attached. Southerland Statutory Construction, Par. 222. In the more elaborate Street Railway Act passed in 1867, and which must be looked to as one source of the city's power to pass an extension ordinance, this provision does not occur as a proviso."

Speaking further on the matter, on pages 379 and 380, the Court says:

> "The just, reasonable and fair interpretation of the provision in each act requiring consent is that nothing in either act shall be construed as authorizing any such road to occupy the streets of any city with its tracks and cars without first obtaining from such city a right of way necessary, which right may be granted by the city upon terms and conditions satisfactory to it and acceptable to the company, and that such consent to such construction and occupancy will not be subject to repeal or alteration when granted and accepted."

Speaking further, on page 380, the Court says:

> "However this may be, we are of opinion that these acts (meaning the Train and Street Railway Acts) do directly confer power to consent to such use of the streets, and that when such consent is once given and accepted, it is irrevocable for the term fixed by the grant."

On page 382 the Court further says:

> "We are thus to conclude that these street railway acts directly confer upon municipalities of the State power to grant to street railway companies such an easement or way in the streets as is requisite for the purposes to be accomplished."

At another point in the opinion, at page 375, referring to the Street Railway Act, the Court says:

> "By Section 3564, all the powers, rights, protections and privileges conferred by the act were extended to all companies theretofore organized in that State."

The opinion of the Court in this case all the way through proceeds upon the assumption that even though the companies with whom the renewal or extension contracts were made had been incorporated and were doing business under the provisions of the Train Railway Law, still that from the time of the passage of the Street Railway Act in 1867, they possessed all the powers, rights, protection and privileges conferred upon street railway companies by the Street Railway Act, and that all grants made to them subsequent to the date mentioned have for their validity and meaning to be construed in the light of the provisions of that act.

Even though that decision had not been made and the question had never been before the Court of Appeals, the language of the Street Railway Act is so plain and so clearly has for its purpose the scope and effect which we assert, that the Court cannot avoid reaching the conclusion that the complainant is entitled to the benefit of its provisions. The section which in direct terms grants to existing companies the powers, rights, protection and privileges thereby created, is not the only one having reference to the existing companies. Section 15 thereof authorizes the purchase of any existing road owned by any other corporation or company, with all of the real and personal estate belonging thereto, the rights and franchises thereof, and authorizes the purchasing company to use and maintain the same, and upon the same terms as the company whose road and franchises were so acquired, might have done.

At the time of the passage of this act there were no street railroad companies, or street railway lines, in existence except those organized or constructed under the Train Railway Act, so that clearly the Legislature had in mind such companies and such railways in the enactment of section 15.

Section 19 of the Street Railway Act provides as follows:

> "The Common Council or other corporate authorities of the city or village in which any street railway shall be located may from time to time by ordinance or otherwise establish and prescribe such rules and regulations in regard to said railway as may be required for the grading, paving and repairing of the streets, construction of sewers, drains, reservoirs and crossings, and the laying of gas and water pipes upon, in and along the streets traversed by such road, and to prevent obstructions thereon."

It will be noticed that this section immediately precedes the section which requires that the rate of toll or fare for transportation of passengers should be fixed by agreement between the city and the company, and a comparison of the two sections placed in juxtaposition clearly points out the distinction which the Legislature had in mind between those things which pertain to the construction and operation of the road, and the occupation of the street therefor and the substantial right of the company in the matter of tolls and fares.

It will be noticed in the above sections, 19 and 20, that the provisions are made to apply to any street railway company, and are not confined in their application to the companies organized under the provisions of the Street Railway Act proper.

Quoting again section 29, which is as follows:

> "All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

We call the attention of the Court in connection therewith to the fact that the only statute ever in force in Michigan for the organization of street railway companies prior to the time of the passage of the Street Railway Act was the Train Railway Act, and there can be no question but the Legislature in enacting section 29 had in mind the companies that had theretofore been organized under the Train Railway Act for street railway purposes. Examining the Street Railway Act at length, one cannot avoid reaching the conclusion that while many of its provisions have express reference and are intended to regulate the affairs of companies organized thereunder, yet that many portions of it were intended to be general in their application, and to regulate, define and protect the rights of other corporations engaged in the same general business.

The decisions of the courts are numerous holding that even without such express application of the provisions of the statute to existing corporations as we find in this Railway Act, that general enactments by the Legislature touching corporations generally will be held to apply to existing corporations, and either to enlarge or diminish their rights,

powers and privileges; or to confer upon them additional protection or additional franchises.

C. That the grants by the city to the company were executed contracts, and that the relations between the city and company were contractual; and especially with reference to the substantial rights to construct and operate a road and to collect fare, is well settled as matter of general law. It will be found on examination that in most of the States, the right to occupy the streets of a city for street railway purposes and the terms and conditions upon which such right may be acquired have been left by the legislative bodies to the discretion of the municipalities, requiring in every case that the company shall obtain the consent of the municipality to the use of the streets, and that such consent shall be upon such conditions and requirements as the municipality may see fit to impose.

There is very little variation between the enactments touching this matter. They all seem to have about the same legal significance, and it is universally held that when such consent has been given and the conditions upon which such consent is given have been agreed to, that a contract is thereby created, and that the power of the city is exhausted so far as it has any power to deal with the substantial rights created by that contract.

This question has been before the Federal Supreme Court in a number of cases.

See Chicago vs. Sheldon, 9 Wallace, 50.

City Ry. Co. vs. Citizens' Ry. Co., 166 U. S.

In each it is expressly determined that an ordinance like the ones we have under consideration here is a contract measuring the rights of the parties during the term for which it is made.

See also Baltimore vs. Street Ry. Co., 64 Federal, 153.

City of Detroit vs. Detroit Citizens' Street Railway Company, 12 C. C. A., 365.

People vs. Western Division Railway Company, 111 Ill., 113.

Tudor vs. Chicago South Side Rapid Transit co., 164 Ill., 73.

State vs. Corrigan Street Railway Co., 85 Mo., 263.

City of Ashland vs. Wheeler, 88 Wis., 697.

City of Columbus vs. Street Railway Co., 45 Ohio State, 104.

Railway Company vs. Vilage of Carthage, 36 Ohio State, 634.

Street Railroad vs. Smith et al., 29 Ohio State, 292.

So far as the rule in Michigan is concerned, this question of the nature of the relations between street railway companies and municipalities established under grants like the ones in question here, is wholly disposed of by our Supreme Court in People vs. Fort Wayne & Elmwood Railway Company, 92 Mich., 522.

That was a case where they sought to prosecute quo warranto proceedings against the defendant to exclude it from laying its tracks upon a certain street under a street railway grant. The Court refused to entertain the proceeding, basing its decision upon a decision of the same Court in Maybury vs. Gas Light Compny, 38 Mich., 154, in which they said:

> "It (this grant) is not a State franchise but a mere grant of authority, which, whether coming from private owners or public agents, rests in contract or license and in nothing else. A violation of the contract or unauthorized intrusion must be redressed as all ordinary wrongs are redressed by the usual legal remedies. It in no wise concerns the State whether a power is granted or withheld, nor whether the corporation is or is not fulfilling its agreement."

The above case in the 33 Michigan was cited with approval in Attorney-General vs. Railway Company, 96 Mich., 65.

Clearly the right to collect a certain rate of fare for the carriage of passengers must be deemed a matter of contract under the circumstances, and in such cases as have arisen on that specific subject, the courts have uniformly held that where by the charter or act of incorporation the right is granted to the company to collect a certain rate of fare, it is deemed to be a contract right, which cannot be interfered with, or modified by subsequent legislation adverse to the company.

It is claimed that the right to regulate fares and tolls to be charged by railroad companies is within the police power of the State, that the rate cannot be fixed by contract so as to prevent the city or state from changing the same, but we do not so understand the authorities.

The principle decided, is in substance this: that while the Legislature in the exercise of its police power has the right to fix the rates to be exacted by railroad companies for the carriage of persons and proprty in the first instance, yet, that wherever it has in the charter or act of incorporation fixed the rate to be charged and authorized the company to charge that rate, or authorized the company to regulate and fix the tolls up to a certain maximum rate, a contract right is thereby created and conferred, and the grantee cannot be deprived of the right to exact the toll fixed, or the right to regulate the toll up to the maximum mentioned, by subsequent legislation.

The Supreme Court of Michigan in Pingree vs. Michigan Central Railroad Company, 76 Northwestern, 636, states:

> "That to the assertion that the right to regulate tolls belongs to the police power and cannot be bartered away, we reply that the almost uniform current of judicial authority is to the effect that such power may be given to corporations, and that where the intent to do so is clear, a subsequent attempt by the Legislature to fix tolls is the violation of a contract under the provisions of the Federal Constitution."

On page 637 it was quoted from the Missouri Supreme Court, which states:

> "Fixing rates in the charter is an exposition of what is reasonable and exclusion of tacit or implied conditions on the subject. It is the essential part of the contract of incorporation, the most important condition of its acceptance. The inducing cause of its acceptance. * * * That this was a valid contract by the city and inviolable by it we regard as settled authoritively by Federal and State decisions too numerous for citation. If anything is or ever can be settled in American constitutional law, the sanctity and inviolability of a contract between a State and individuals in the shape of a charter for a business enterprise, accepted and acted on by the corporators on the faith of its terms and

provisions must be so regarded. The appellee has the unquestioned right from time to time by its board of directors to fix the rates at which it will transport over its railroads, provided those rates shall not exceed the maximum prescribed by the charter. That is the contract. These terms were expressly made. On the faith of that capital was invested and the enterprise.....on that. It is not allowable now for one of the contract parties to interfere with the exercise by the other of its plainly granted rights. They are secured beyond the reach of legislation and cannot be impaired."

The attention of the Court is also called to the second opinion rendered in this court by Judge Taft in the case of the City of Detroit vs. Detroit Citizens' Street Railway Company et al., and reported in the 60th Federal Reporter, page 171.

It was claimed that the City of Detroit was estopped from asserting the invalidity of the extension contract because of the provisions of the contract of 1889, which provided for what are called workingmen's tickets at reduced rates of fare during certain hours of the day and the granting of transfer rights and privileges on the payment of a five cent fare; and also upon the workingmen's tickets so-called; and it was suggested by Judge Taft on the argument that the language of the provision as to the rates of fare indicated a limitation only upon the company, and that the reduced rates of fare might be imposed by the city without the consent of the company. The matter was argued, and in the second opinion was considered at some length by Judge Taft.

In that opinion he distinctly said that he was satisfied that the claim that the language only operated as a limitation upon the right of the company, is not sound. That under its terms, the company had a contract right to charge the full rate of five cents, and that the city could not, without the consent of the company, modify the contracts or require the company to carry for a less rate of fare.

The opinion in the 60th Federal Reporter is not discussed or considered in the argument and decision in the Court of Appeals.

The same rule was declared by the Supreme Court of the United States in Regan vs. Trust Company, 154 U. S., 362, in which Mr. Justice Brewer said:

"If the charter had in terms granted to the cor-

> poration power to charge and collect a definite sum per mile for the transportation of persons or property, it would not have been doubted that the express stipulation formed a part of the obligation of the State which it could not repudiate."

In Chicago, B. & Q. Railway Company vs. Iowa, 94 U. S., 155, Chief Justice Waite said:

> "It is within the power of the company to call upon the Legislature to fix permanently this limitation and make it a part of the charter, and if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done the charter might have presented a contract against future legislative interference."

In Peik vs. Railway Company, 94 U. S., 164; Munn vs. Ill., 94 U. S., 113; and the C., B. & Q. Company vs. Iowa, above cited, the Supreme Court passed upon the question of the right of the State to regulate the charges by railroad companies for fares and freights, sustaining the exercise of that power only in the absence of a provision in the charter fixing the rates of fare.

To the same effect is State vs. Maine Central Railway Company, 66 Maine, 488.

The cases last above cited are of value in another phase of this question, and that is this: If the Legislature itself could, in the granting of a charter to a company or in the provisions of a general act of incorporation under which a company might be formed, fix the rates of fare and thereby create a contract right which it would not be permitted afterwards to impair or change adversely to the interests of the company, it clearly would have the power and the right to say that the authority lodged in the city to deal with the question of fares must be limited to the exercise of a contractual power in that respect, and that in dealing with that part of the subject matter in making its contract with the railroad company by which the company would have the right to enter upon the streets and construct and operate a railroad, the terms of the grant should be a matter for agreement and contract, thereby giving to the city only a limited authority to deal with the subject matter, and not conferring upon it any general legislative authority over the question of fares.

If as matter of general law the relations between the company and the city are contractual, and that when the Legislature deals with the question of the rates of fare, and in the charter grants to the company the right to exact a certain rate of fare, a contract is thereby created

as matter of law; how much more so is that true in the case at bar when considered in the light of Section 20 of the Street Railway Act, which in express terms removes the question of the rates of fare from the domain of general legislative authority and jurisdiction, and declares that it shall be a subject of agreement alone.

What is the legal significance of Section 20? An examination of both the Train Railway and Street Railway Acts fails to disclose any provision, other than Section 20 of Street Railway Act, that can be said to confer specifically on the city the power to deal in any way with the subject of the rates of fare for the carriage of passengers on street railroads. While in the absence of such provisions it would be proper for the city in granting its consent to fix the maximum rate of fare which might be charged for the carriage of passengers on the proposed railway, as was done in the first instance when the grants were made solely by authority of the Train Railway Act; yet when the Street Railway Act was passed containing Section 20, that section became the rule by which the city must be guided in dealing with that question from that time forward; and if it undertook to deal with a street railway company either in the making of a new and independent grant, or by re-executing or extending a grant theretofore made, its action with reference thereto must be conclusively presumed to be subject to and in accordance with the terms of Section 20. From the time of its enactment it became the sole measure of authority of the city to deal with the question of fares, and whatever it did must be considered as done in accordance therewith and under the authority thereby granted.

It is not only to be considered as a grant of authority to the city to deal with the subject, but also is to be considered as a limitation upon the authority of the city to deal with the subject, and is the full measure of that authority.

This is clearly so under the well settled rule that where authority is given to a municipality to act in a certain manner with reference to a certain subject matter, the terms of the grant constitute the full measure of the authority conferred; and if the mode in which that authority is to be exercised is declared by the enactment, then the mode becomes an essential part of the grant, and the authority therefor can only be exercised in the mode pointed out; and therefore when the city agreed that the street railroad company might charge a certain rate of fare by the making of a grant containing the provision fixing the rate of fare, which grant was accepted by the company, it

will be presumed to have thereby exercised the contractual power conferred upon it by Section 20.

The terms of the section exclude and forbid the idea that the city retained, if it ever had, any general legislative power, over the subject. It is not an independent authority which the city possesses over the matter, because it can only be exercised in co-operation with the railroad company; nor is it legislative, because in express terms the section requires the consent of the company and that an agreement shall be reached as to the rates of fare.

Loveland vs. The City of Detroit, 41 Mich., 367, illustrates this proposition. In 1861 a new system of police was organized for the City of Detroit. A Board of Police Commissioners was created, and most of the police arrangements were specially entrusted to this board, and the officers provided for by the act. It was provided in the Police Act as follows:

> "The Common Council shall have power by a vote of two-thirds of all the aldermen elected to authorize the Board of Police Commissioners to offer a reward for the detection and apprehension of any offender against the city ordinance, or of the perpetration of any high crime or misdemeanor committed within the city, to be paid on the conviction of such offender or criminal."

In November, 1874, the Common Council passed the following resolution:

> "Resolved, That the Mayor be, and he is hereby authorized to offer a reward of five hundred dollars for the apprehension and conviction of any person who has been since the first day of October of the present year, or who shall hereafter be concerned directly or indirectly in any act of incendiarism in the City of Detroit."

In accordance with the resolution the Mayor by proclamation offered a reward of $500 and the plaintiff Loveland earned the reward so offered by securing the conviction of a criminal. The city refused to pay the reward and he brought action for its recovery; and the Supreme Court of the State held that the provision of the Police Board Act which I have quoted, namely, that the Common Council might authorize the Board of Police Commissioners to offer a reward, was the sole and only au-

thority which the city possessed to offer rewards; and that it must be made in the manner and through the channel pointed out in that provision. It was claimed that the city, prior to the adoption of the Police Board Act, had the general power to offer rewards for the conviction of offenders, which it must be assumed was broad and discretionary, and such power was not taken away by the adoption of the provision contained in the Police Board Act. In reference to that the Court says:

> "We cannot reconcile such a guarded provision with any reserved power to give rewards by the action of a mere majority of the council, and through other agencies than that in charge of the police supervision. It is quite unimportant whether we suppose there was or was not any implied power before Chapter 13 was adopted. If there was such power, we think that chapter had the effect of defining and limiting it. If it does not limit the power it is senseless and useless. * * * We think the council could not authorize the Mayor independently of the Police Board, to offer the reward in question."

Acting upon that view, the Supreme Court denied the right of the plaintiff to recover.

Can it be said that the provision which we have quoted authorizing the council to offer a reward through the Police Board for the arrest and conviction of criminals is any more guarded in dealing with that subject matter, or any more explicit in its terms than Section 20 of the Street Railway Act is in fixing and defining the character of the authority which the city has over the subject of fares, and the method by which it shall be exercised? The general doctrine on this point is well stated by the late Justice Field in Zottman vs. San Francisco, 20 California, 96. He states it as follows:

> "The rule is general and applies to corporate authorities of all municipal bodies; where the mode in which their authority on any given subject can be exercised is prescribed by their charter, the mode must be followed. The mode in such case constitutes the measure of their power. * * * Aside from the mode designated there is a want of complete power on the subject."

D. Touching the effect of the reservations of power claimed to have been made by the city in making the

original grants and stated in the fourth proposition of law, the attention of the Court is called to the exact language of the clauses. We repeat in full the one contained in the original Detroit City Railway grant, the language of all the others being identical. It is as follows:

> "Section 19. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways."

It will be noted that the terms used are, that they shall make such *further* rules, orders or regulations as may be necessary to protect, etc.

This language is significant. It does not reserve the right to make other rules than those made by the grant touching the same subject matters, or to change any of the existing rules and regulations; or to amend or alter any portion of the grant. The plain common sense meaning of it is, that the Council thought there might be some matters not treated of or regulated in the original grant, and that it would be wise to in express terms reserve the power to maks such additional rules as might be necessary in the opinion of the Council to protect the interests of the public. It can have no other meaning.

Clearly this clause cannot, by any process of reasoning or any known rule of construction, be held to reserve in the city or confer upon the city a power or authority which it did not have in the first instance, the right to make changes in the substantial and essential characteristic of the grant, as for illustration: These further rules and regulations must under all canons of interpretation be held to have reference to those matters over which the city could exercise independent action without being obliged to obtain the consent of the company thereto. The language of the clause is "It is *hereby reserved to the Common Council of the City of Detroit* the right to make such *further* rules, orders, etc. This is the phraseology of a reservation by which the city retains the freedom to exercise a power already possessed and not exhausted. To include within it the right or power to independently re-establish the rates of fare is to give it the scope and effect of conferring on the city a power which the Legislature clearly did not intend it to possess, and to give it the force and effect of a distinct grant or concession of authority from the company having no warrant in the statute and wholly outside thereof. It might be said to have reserved to the city, if

such reservation were necessary, the right to make rules as to the speed of the cars, the number of cars that should be operated for the accommodation of the traveling public, the size of the cars, the number of people allowed to ride therein, the points along the various streets at which the cars will be permitted to stop, and where tickets are by agreement required to be sold, to require them to be sold upon the cars, because these things do not affect and in a legal sense impair the grant made to the company; nor would such regulations deprive the company of any substantial property rights.

On the other hand, it is self-evident that if they can, by adverse legislation, cut down the rate of fare which the company is entitled to charge by the terms of the agreement, they could also cut down the term for which the grant was made. Both are substantial property rights, and each forms a part of the consideration, and together, in substance, form the whole consideration upon which the grant was made and accepted, and for which the company assumed the obligation to construct, maintain and operate a street railway and perform the duty of carrying passengers.

There can be no difference between the two in so far as their effect upon the property of the company is concerned; because it would be no more an invasion or lessening of property rights of the company to cut down the term of its grant from thirty to twenty-five years, leaving the rates of fare as they were in the beginning, than it is to cut down the rate of fare forty per cent of the amount fixed by the original contract, as is attempted in this case, leaving the term of the grant as it stood before.

Judge Cooley, in a case involving a question of what was meant by what is termed corporate rights, included in the classification the right to construct, maintain and operate the road and the right to collect tolls for the carriage of passengers and property thereon. Those are substantial rights and cannot be intended as included within the class of things over which and in regard to which the Common Council reserved the power of regulation. It cannot be believed for a moment that such was the understanding of the parties when the contract was made, because if it was intended that the Common Council might under such reserved power either shorten the franchise or grant, or lessen the rate of fare to be charged for the transportation of passengers, then the right to operate the road and the right to receive remunerative and compensatory revenue therefrom were simply optional in their character, liable

to be practically destroyed at the will of the city. The making of a rule or a regulation with reference to the management or use of property in connection with the public cannot, by any course of reasoning, be extended to the destruction of the property or to the entire changing thereof.

We are not without authority in support of this view. (See Old Colony Trust Company vs. The City of Atlanta, 83 Federal Reporter, 39, afterwards affirmed by the Circuit Court of Appeals for the Fifth Circuit in The City of Atlanta vs. Old Colony Trust Company et al., 88 Federal Reporter, 859.)

This case is an authority upon the question of the right to reduce the rates of fare, and also to compel the giving of transfers where transfers were not called for by the original agreement; and the power of the city was denied in both respects.

The court, in that case, had to consider four propositions made by the counsel for the city in support of the validity of the attempted legislation.

First. It was claimed that the language of the city charter of Atlanta, which empowered the city to pass all by-laws concerning carriages, wagons, carts, drays, etc., and every by-law, ordinance and regulation that it may deem proper for the peace, health, order and good government of the city conferred upon the municipality the authority to enact the ordinances in question.

It seems that the charter provision authorized the city by ordinance to regulate hack and dray charges. The court held that such a provision in the city charter had no reference to the matter of street railroads or the rate of fare to be charged thereon.

It was further sought to sustain the ordinances under the terms of a provision in the act of incorporation of the street railroad company to the effect:

> "That the rates of fare and freight upon said railroad shall be subject to the approval of the Mayor and City Council of the City of Atlanta."

With reference to that proposition the court says:

> "It is insisted that under the language quoted which makes the rates of fare subject to the approval of the Mayor and City Council, the city has the power to fix rates. Soon after the passage of this act an ordinance was passed by the city authorizing the use of the streets. The company did not build under the first ordinance, but subsequently in

> 1868 or 1869, as it appears from the bill, another ordinance was passed, and under this it is alleged that the Atlanta Street Railroad Company constructed its lines. Among other things, there was a provision in the ordinance under which the lines were built that 'the charges for passage on said road shall not exceed twenty cents for any through line, and ten cents for half lines or short distances.' We do not express any opinion upon the question raised and discussed at the bar as to whether this constituted a contract between the city and the street railroad company from which the city could not withdraw, because other conclusions we have reached render its determination unnecessary. This change is manifestly to the effect that if the city derived from the above quoted provision of the charter of the Atlanta Street Railroad Company any power to fix rates of fare, it exhausted that authority when it passed the ordinance referred to fixing the rates of fare at twenty and ten cents respectively."

The court, proceeding further, holds that the power vested in the city by the charter of the company to approve rates, does not authorize the city, independently and on its own motion, to fix rates, and is a direct authority upon the proposition that only the power expressly granted by the statute can be exercised by the city.

Citing in support of the proposition Cincinnati, New Orleans & Texas Pacific Railroad Company vs. Interstate Commerce Commission, 162 U. S., 184.

Second. It was further sought to sustain the ordinance in that case under the provisions of a validating act with reference to street railroads in question to the effect that those street railroad companies should

> "Be subject to pave, and shall be liable for street paving and other regulations of municipal corporations as are other railroads and street railroad companies incorporated by separate act or acts by the law of this State."

The attention of the court was called to certain street railroad charters, one of which, at least, contained a provision authorizing the city to fix rates of fare, and that the power was, therefore, given to the City of Atlanta.

The court disposes of that proposition by holding that the power of regulation did not embrace the power to fix

rates of fare, pointing out that it unquestionably referred to regulation of the speed of cars and their movement on the streets, location of poles, stringing of wires and the protection of the public therefrom.

Third. It was claimed that the reservation made by the city in the ordinance or grant in that case that the company should be

> "Subject to all the laws and ordinances now in force and such as may be hereafter made,"

authorized the city to pass an ordinance fixing the rates of fare under discussion.

In denying that proposition the court says:

> "Of course this ordinance should be treated as contended for by counsel for the consolidated company, and the word 'legally' should be read into it, and should read as though it said such ordinances 'as may be hereafter legally made;' and the question, therefore, recurs to and is, what legislative grant has the city empowering it to pass this transfer ordinance? As we do not find in any of the acts of the Legislature relied upon the power to pass the ordinance, we are compelled to hold that the city exceeded its authority in passing it. We hold, moreover, that before the city can exercise the power to fix rates of fare for a street railroad company it must obtain that power in express terms, or it must arise by necessary implication from the words used in the legislative act. The power of the State over the subject matter need not be discussed. We are dealing with the power of a municipality, a creature of the Legislature, which derives all its authority from the Legislature, and can only act within the limits of the legislative grant. If under any of the acts of the Legislature which have been discussed it might be held that the city had the power, by necessary implication, to regulate or to fix rates of fare for street railroads or for this particular company, it might be gravely questioned even then if it had the power to pass that particular ordinance in question requiring transfers. It would be a subject of serious doubt at least if the authority to fix rates carried with it the authority to require the street railroad to give two or three or more rides for one fare. One continuous ride for a single fare is

one thing, and two or more rides with the necessary stoppage and letting passengers off and taking them on is another and entirely different thing. Many reasons have been urged in argument and others might be suggested which, in our opinion, made a broad distinction between the two classes of service, namely, between a continuous ride in one car and a right to require transfers from one or more cars to others. Unquestionably this ordinance as to its feature requiring transfers is a very broad exercise of municipal power. It appears to go to the limit of municipal control even under legislative authority. The power to pass an ordinance should be clearly shown. On the contrary, it is clear to us that the city is without such power. As we understand the opinion above expressed on the first question involved, namely, as to the power of the city to pass the ordinance in question, it is unnecessary to go into the second ground on which the ordinance is attacked in the complainant's bill. The question of the reasonableness or unreasonableness of the ordinance becomes immaterial if the city lacked legislative authority to pass it."

In conclusion, the opinion holds the ordinance invalid.

The case was taken to the Court of Appeals for the Fifth Circuit, and, as above stated, it is found in the 88th Federal Reporter, 859, and in a short percuriam opinion the conclusion of the Circuit Court upon all the points, together with the reasoning in support thereof, is fully approved of and sustained.

A very strong decision covering the points raised here was rendered in Africa vs. Board of Mayor and Aldermen, 70 Federal Reporter, page 729.

The question was before the Michigan Supreme Court in Electrical Railway Company vs. City of Grand Rapids, 84 Michigan, 257. In that case the company obtained the approval of the Common Council of Grand Rapids for the kind and pattern of poles to be used in its system, and the permission to use wooden poles in certain sections, such permission containing the following clause:

"In consideration of granting said street railway company the privilege of erecting said wooden poles in certain public streets of the city, said company shall be required to furnish its patrons, through its conductors, drivers or agents on or in charge of their several street railway cars, without additional

> cost, transfer tickets on the following named lines, viz: Cherry street and Eighth Ward line; West Bridge street and Ionia line; Wealthy avenue and Scribner street line; passengers to be on demand furnished with transfer tickets good on the so-called Hall street and Plainfield avenue line, and said Hall street and Plainfield avenue line passengers to be on demand furnished with transfer tickets good on the above enumerated lines, viz: Cherry street and Eighth Ward line; West Bridge street and Ionia line; Wealthy avenue and Scribner street line."

The question in the case was whether the Common Council could attach such a condition to the approval of the poles and require the company to furnish the transfers which they were not required to furnish under the original grant. The court cites the provisions of the Street Railway Act, especially sections 13 and 14, and disposes of the case, holding that the permit and approval of the poles was valid and entitled the company to proceed under it, but that the condition requiring the furnishing of transfers was invalid as beyond the power of the city. Their holding, in brief, was:

> "That the condition attached to the use of wooden poles outside of such fire limits is wholly inoperative and void, and beyond the power of the council to prescribe. This provision is in direct conflict with Section 14, Chapter 95, Howell's Statutes, and is an attempt to deprive the relator of the rights and privileges conferred by the ordinances theretofore adopted and the terms of which it is conceded the relator had duly accepted."

This decision seems to dispose of this case.

It may perhaps be claimed that the case of the City of Detroit vs. Fort Wayne & Belle Isle Railway Company, 95 Michigan, 456, furnishes some support of the claim of the city in this case. That case involved simply whether the company, having agreed in the ordinance of 1889 to sell the so-called workingmen's tickets at the rate of eight for twenty-five cents, good for passage at certain hours of the day, could be required to furnish its conductors on its cars with such tickets for sale, or keep them for sale on its cars at all times. The Supreme Court simply held that that was a regulation for the convenience of the public and was a valid exercise of power within the reservation contained in the original grant

to the city to make such further rules, orders or regulations as it might deem desirable. It clearly has no reference to such a question as raised here.

E. What has been said with reference to the propositions there discussed renders it unnecessary to say anything further in regard to the fifth proposition of law. The cases cited fully dispose of that question, therefore we will briefly consider again the sixth proposition of law, viz., that by the terms of the various agreements, the companies obtained the right to charge the full fare of five cents; and there is no difference in legal signification between the statement that the fare "shall not exceed five cents" and a statement that the rates of fare "shall be five cents."

If we are right in our proposition that the power of the city is simply the right to make a contract with the company as to the rate of fare, then having made a contract with the company as to the maximum rate of fare which it shall charge, any attempt to lessen the maximum rate of fare is such a violation of the contract, as though in the original agreement it said in flat terms that the rate of fare should be five cents, and the city should afterwards attempt to require that the rate of fare should be three cents. The city will be conclusively presumed in making its agreement with the company to have agreed that the maximum rate fixed, to-wit, five cents, is a reasonable charge for the carriage of a passenger, and that such rate should remain a reasonable charge during the full term of the grant; and the Legislature having authorized the city to make a contract fixing a maximum reasonable rate of fare and the city having made such a contract, neither the Legislature acting directly or through the instrumentality of the city, will be heard thereafter to say that the maximum rate of fare fixed by the contract is not a fair charge, and that the company shall not continue to have the right to make the full charge fixed.

Assuming that the Legislature has undertaken directly or indirectly to confer upon the city the power to regulate rates of fare upon street railroads and to require that passengers shall on demand be transferred and carried free of charge on some other line or route constructed and operated under independent municipal grants; and that such authority was conferred since the making of the contracts in question, and that the ordinances in question were passed in the exercise of that authority; then we say they are an impairment of the contract rights of the complainant and void under the provision of the

Federal Constitution prohibiting any State from passing any law impairing the obligation of a contract.

The Legislature, by the terms of sections 13 and 20, conferred upon the city the power to grant to a street railroad company the right to construct its road in the streets and subject to such conditions as it might desire to attach thereto, and to agree with the company as to the rate of fare. When the city thus authorized has acted, a contract right is created and conferred which is wholly beyond the power of the Legislature to alter or impair. This is clearly the rule established by all of the authorities, and notably the case of the City Railway Company against the Citizens' Railway Company, in the 166th U. S., page 557. In fact, no case can be found involving the question of interference with the rights of street railway companies under their grants where the circumstances were not that the Legislature had authorized the municipalities to make the contract, and the contract having been made, the municipality claiming either direct or indirect authority from the Legislature thereafter undertaking to alter or change the contract adversely to the interests of the company; and in no case was it held that there was any reserve power in the Legislature to deal with the subject matter which took the contract out from under the protection of the Federal Constitution.

It is respectfully submitted that the decision of the court below should be affirmed.

M. BRENNAN and
JOHN C. DONNELLY
Counsel for Appellee.

UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES.

THE CITY OF DETROIT,
WILLIAM C. MAYBURY, Mayor,
CHARLES FLOWERS, Corporation Counsel,
Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

We will first set forth the constitutional and statutory provisions of the State of Michigan to be considered in this case.

CONSTITUTIONAL PROVISIONS.

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

Art. 15, Sec. 1.

"The legislature may confer upon organized townships, incorporated cities and villages, and

upon the board of supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper."

Art. 4, Sec. 38.

STATUTORY PROVISIONS.

To facilitate the construction of tram railways to connect the mines of Lake Superior with the lake shore, the Michigan Legislature, in 1855, passed "An Act to provide for the construction of train railways."

Mich. Laws of 1855, p. 338.

The use of the word "train" in this act instead of the word "tram" was a mistake in printing the laws.

In 1861 the legislature amended the tram railway act so as to authorize the construction of street railways under it, by adding two sections to the act:

> "Sec. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State.
>
> Sec. 34. All companies formed for such purpose shall have the exclusive right to use the same: Provided, however, That no such company shall be authorized to construct a railway under this act, through the streets of any town or city, without the consent of the municipal authorities of said town or city; and under such regulations, and upon such terms and conditions, as the said authorities may from time to time prescribe."

Mich. Session Laws, 1861, p. 11.

In 1863, and before any street railway corporation had been organized under the act, two additional sections were added to the act authorizing street railway corporations "to borrow money for the purpose of constructing and operating the road or roads proposed to be constructed by them, and for that purpose to mortgage or create any other lien upon their franchise, road, superstructure, fixtures, rolling stock and equipments; and whenever such corporation or association shall have acquired a simple easement or right of way for its proposed road or any part thereof, and shall have made and filed its

articles of association in conformity to the provisions of the act hereby amended, any mortgage or mortgages executed by such corporation or association upon the route or routes where such easement or right of way has been obtained as aforesaid, shall be a legal and valid lien upon the right of way so obtained," etc.

It was also provided that in case any street railway corporation desired to build or extend its tracks along any of the public highways of the State not included within the limits of any city or incorporated village, it should have the exclusive right so to do, "provided such corporation or association shall first obtain the written consent to such building and extension of the supervisor and a majority of the commissioners of the highways of the town or towns in which such highways are located respectively, and which said consent may contain such regulations in reference to the construction, location and operation of the portion of said road in such town or towns as may be agreed upon between the corporation and said officers respectively."

Mich. Laws, 1863, p. 33.

In 1867 Section 34 of the Tram Railway Act above set forth was amended by adding to the section another proviso as follows:

> "Provided further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

I. Mich Laws, 1867, p. 257.

At the same session of the legislature a general street railway law was passed entitled, "An Act to provide for the formation of street railway companies."

I. Mich. Laws of 1867, p. 46.

The sections of this act to be considered in this case are as follows:

> "Sec. 13. Any street railway corporation organized under the provisions of this act, may, with the

consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations, and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for transportation of passengers, in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road, in and along the streets or highways of any township adjacent to said city or village, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk, in the records of his township. Any company organized under the provisions of this act, may construct, use, maintain and own a street railway for the transportation of passengers, in and along the streets and highways of any township, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township.

Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been acepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred.

Sec. 15. Any street railway company may also purchase and acquire, either at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township,

owned by any other corporation or company, together with all real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights, privileges and franchises of such company, the same, and upon the same terms, as the company whose road and franchises were so acquired might have done. Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part hereof, together with their railway fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage whenever the corporation shall deem it expedient so to do.

Sec. 18. Every street railway company is hereby required to lay the track of their road or railway in such way or mode and with such kind of rail, and to keep their railway and that part of the street and pavement within and adjacent to the track of such road or railway, in such condition and state of repair as shall be prescribed and provided in the consent, grant or agreement of the municipal authorities permitting the construction and location of such road or railway.

Sec. 19. The common council or other corporate authorities of the city or village in which any street railway shall be located may from time to time, by ordinance or otherwise, establish and prescribe such rules and regulations in regard to said railway as may be required for the grading, paving and repairing the streets and the construction of sewers, drains, reservoirs and crossings, and the laying of gas and water pipes, upon, in and along the streets traversed by such roads, and to prevent obstruction thereon.

Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road, *shall be established by agreement between such company and the corporate authorities of the city or village where the road is located*, and shall not be increased without consent of such authorities.

Sec. 29. All companies and corporations *heretofore* organized in this State for the purpose of building and operating street railways under the statutes *then* in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act.

Sec. 30. All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons and passengers, in any city or village, shall be organized under the provisions of this act, and shall be subject to the provisions of chapter seventy-three, of the compiled laws of this State, and to all other general laws of this State, relating to corporations, so far as the same may be applicable to corporations formed under this act, and the legislature may alter and amend, or repeal this act at any time."

The acts from which we have quoted the foregoing provisions constitute Chapters 167 and 168 of the last compilation of the laws of Michigan.

2 Mich. Comp. Laws, 1897, pp. 2027, 2037.

TAXATION.

Section 22 of the Tram Railway Act and Section 26 of the Street Railway Act of 1867 were the same, viz:

> "Each and every railway company formed under this act shall pay to the treasurer of the State of Michigan an annual tax, at the rate of one-half of one per cent on the whole amount of capital paid in upon the capital stock of said company; which said tax shall be estimated upon the last preceding report of said company, and shall be paid to the said treasurer on the first Monday of July in each year, and shall be in lieu of all other taxes upon all the property of said company."

Both were repealed in 1882.

Mich. Public and Local Acts, 1882, p. 4.

This repeal left the property of the street railway corporations to be taxed under the general tax laws of the State; and it resulted in a controversy between the Detroit City Railway and the City of Detroit to be hereinafter referred to.

LOCAL GRANTS.

The first street railway grant made by the City of Detroit was contained in an ordinance approved November 24, 1862. It was amended December 27, 1862, and January 12, 1863, and it was soon afterwards accepted by the grantees who organized the Detroit City Railway under the Tram Railway Act for that purpose. The sections of the ordinance requiring consideration in this case are as follows:

> "Section 1. That consent, permission and authority is hereby given, granted, and duly vested in Eben N. Wilcox, and his associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws

of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks, and switches, in and along the course of the streets of, and bridges in, the City of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance. (As amended December 27, 1862.)

Section 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

Section 19. It is hereby reserved to the Common Council of the City of Detroit the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public, in relation to said railways.

Section 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

Section 22. The said grantees, and their assigns, shall pay to the treasurer of the City of Detroit, annually, fifteen dollars on each and every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license, for the use of the city, after the term of five years from and after this date."

Record, p. 113.

Numerous supplementary grants were made to the Detroit City Railway. Other grants were made to corporations organized either under the Tram Railway Act or under the Street Railway Act of 1867, which corporations subsequently sold and assigned their roads to the Detroit City Railway or to its successor, the Detroit Citizens'

Street Railway Company. It is sufficient to say of them that the grants were made by ordinances substantially in the same form as the original grant, above set forth, to the Detroit City Railway.

By an ordinance approved November 14, 1879, and duly accepted by the Detroit City Railway and the other railway corporations named in it, provision was made for the payment by the Detroit City Railway of a city tax of one per cent on its annual gross receipts. New stipulations were also entered into in regard to street paving. The ordinance also contains the following provisions:

> "The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes, and charges for paving under existing ordinances."
>
> "The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto are hereby extended and limited to thirty years from date."
>
> "The right to amend or repeal this ordinance in case of its violation by said company is expressly reserved."

The repeal in 1882 of the State specific tax on street railway companies was claimed by the city to subject the property of the Detroit City Railway, notwithstanding the provisions of the ordinance of November 14, 1879, to the payment of general city taxes. This claim on the part of the city resulted in litigation between it and the company. The controversy was finally adjusted between the parties by an ordinance passed over the mayor's veto by the common council January 1, 1887. The provisions of that ordinance are as follows:

> "Section 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall pay to the city treasurer two per cent of its gross receipts. At the expiration of each half year during the entire period above mentioned the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to the said city treasurer the percentage so found to be due.

Section 2. From the first day of July, 1882, to the end of its franchise under the ordinance approved November 14, 1879, said railway shall also pay the City of Detroit such taxes as have been up to this date and shall be thereafter levied and assessed in the same manner, and shall be payable at the same time as other city taxes on lands.

Section 3. In adjusting the amount due under the foregoing sections, from the first day of July, 1882, to the thirty-first day of December, 1886, the railway company shall be credited with all sums heretofore paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such balance as may be found due, forthwith upon its ascertainment. Thereupon all suits and proceedings between the city and railway company shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

Section 4. The above mentioned percentage payments and the tax on lands, provided for to accrue from January 1st, 1887, to the end of the franchise of said railway, are to be paid by said railway company and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been made or may be levied, assessed or imposed under any present or future law or authority. If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway, upon the payment of the percentage payments to become due under the ordinance; and the obligation to make such percentage payments shall be satisfied and discharged to that extent; and, in no event shall said railway be liable to pay under any form of tax, license or charge, any sums in excess of said percentage, and the tax on the lands of the said railway as above provided. Provided, however, that nothing herein contained shall be construed as a consent on the part of the Detroit City Railway to

the levying or collecting of any further tax, license or charge than the tax on the gross receipts, hereinbefore provided for, and the tax on its lands hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of the said Detroit City Railway.

Section 5. Subject to the provisions of this ordinance, which are only intended to change the provisions of the ordinance of November 14, 1879, as to the percentage on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

Section 6. This ordinance shall take effect when the Detroit City Railway has filed its written acceptance of the same with the city clerk."

An ordinance passed by the Common Council January 3, 1889, and duly accepted by the company contains the following provision relating to rates of fare:

"Section 4. The above-mentioned additional lines shall be operated in connection with and as a part of the present system of the Detroit City Railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit City Railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to-wit:

(a) It shall carry passengers from its Cass avenue and Third street, Trumbull avenue, Michigan avenue, and Congress and Baker street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker streets, Michigan avenue, Trumbull avenue and Cass avenue and Third street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets, shall

be entitled to be transferred at Fort street to and conveyed by cars running on the proposed line on Fort street east to any point on said Fort street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue, to be carried to any point on said Gratiot avenue and Michigan avenue lines in one continuous trip.

(b) A passenger paying a single fare of five cents on the Gratiot avenue line shall be entitled to a continuous ride on said Gratiot avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction, over the Fort street east, Chene street and Gratiot avenue lines for a single fare of five cents.

(c) It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot avenue lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

(d) Such arrangements shall be made by this company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5:30 o'clock and 7 o'clock in the morning, and between the hours of 5:15 o'clock and 6:15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket to be sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriages provided for in paragraphs 'A,' 'B' and 'C' of this section."

Record, p. 132.

The last paragraph quoted refers to the sale of tickets commonly known as workingmen's tickets.

An ordinance approved February 4, 1893, as amended February 26, 1895, requires the company to sell these workingmen's tickets on the cars.

Record, p. 134.

This ordinance was not accepted by the company, but its validity was sustained by the Supreme Court of Michigan.

Detroit vs. Fort Wayne, etc., Ry., 95 Mich., 456.

In that case the grant was made in 1865 to a corporation organized under the Tram Railway Act.

The opinion of the court, as delivered by McGrath, J., is in part as follows:

> "The Fort Wayne & Elmwood Railway Company was organized in February, 1865, under chapter 94 of Howell's Statutes. Said act was subject to amendment, and in 1867 the following section was added thereto:
>
> 'All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned, or held by them: Provided, That no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe. Provided, further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof.'
>
> The ordinance of 1865, under which said company began operations, contained the following reservation, which is still in force:
>
> 'It is hereby reserved to the Common Council of the City of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public in relation to said railway.'
>
> "In the absence of this reservation in the ordinance, it could not be said that the rights and

franchises of the respondent are destroyed or unreasonably impaired by the requirement sought to be enforced; but, independently of this statutory provision, the reservation contained in the ordinance itself, viz., 'to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public,' certainly includes the right to enact an ordinance that the company shall, for the accommodation of the public, keep tickets for sale upon its cars. Ordinances containing grants are construed liberally in favor of the public. It cannot be contended that the relation created by the ordinance is contractual, and at the same time that the reservation was of the right to enact police regulations only. The right to exercise police power exists independent of the reservation, and could not be bartered away. The contract is not unilateral, intended as a shield for respondent alone.

"The right of a municipality, under the statute, to refuse its consent to the operation of a street railway in its streets, is an absolute one, and its power, in the first instance, to impose conditions, is unlimited. The nature of the conditions imposed does not depend upon other grants of power. Respecting the imposition of further conditions, after consent given, it is only necessary that the municipality keep within the scope of the reservation."

ORDINANCES REDUCING THE FARE TO THREE AND ONE-EIGHTH CENTS.

An ordinance approved August 16, 1899, reads as follows:

"An ordinance to amend an ordinance of the City of Detroit, approved November 14, 1879, entitled 'An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate certain railways in the City of Detroit," approved November 24, 1862, and the amendments thereto, and for other purposes,' by adding a new section thereto to stand as section 6a.

It is hereby ordained by the people of the City of Detroit:

Section 1. That the ordinance of said city, approved November 14, 1879, entitled 'An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate certain railways in the City of Detroit," approved November 24, 1862, and the amendments thereto, and for other purposes,' be, and the same is hereby amended by adding thereto a new section to stand as section 6a, and read as follows:

Section 6a. That the Detroit Citizens' Street Railway Company, its successors and assigns, shall keep on sale on its cars in service at all times tickets to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said railway company, its successors and assigns, for a single ride for any distance in either direction over the lines or routes operated by said railway company, its successors and assigns, on a car on which it is presented, and a passenger presenting such ticket, or upon payment of one single fare charged by said company, shall be entitled to a transfer ticket good for a continuous ride over any other line or route of said company, provided such transfer ticket is presented on the next regular car of such other route within fifteen minutes

after such passenger leaves the car on which he received said transfer ticket.

This ordinance shall not be construed to affect in any manner the line or lines of street railway owned by the Detroit Railway Company.

Section 2. This ordinance shall take immediate effect."

Record, p. 17.

Other ordinances of like import were also passed and approved to reach some of the independent lines acquired by the Detroit Citizens' Street Railway Company.

Record, pp. 18, 21.

The Detroit Citizens' Street Railway Company refused to accept or to abide by these ordinances; and it filed the bill in this cause to have them declared unconstitutional and void on the ground that they impaired the obligations of the contract existing between the company and the City of Detroit.

The question thus presented is the only question in this case.

In the court below the position of the Street Railway Company was sustained.

Record, p. 173.

The city and its Mayor and Corporation Counsel, who were made parties defendant in the bill, perfected an appeal to the Supreme Court of the United States.

Record, p. 174.

I.

The street railway provisions of the Tram Railway Act, as amended in 1861, 1863 *and* 1867, *and the Street Railway Act of* 1867, *are in pari materia, and must be construed together.*

The Street Railway Act of 1867 *is a statutory construction of the prior act; and it expressly confers on the municipal corporations of the State the power to enter into inviolable contracts, fixing the rates of fare to be charged by street railway companies.*

Section 20 of the Act of 1867 unequivocally provides that the rates of fare "shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

And Section 29 provides that "All companies *heretofore* organized in this State for the purpose of building and operating street railways under the statutes *then in force* shall have the same powers, rights, protection and privileges and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

The Act of 1867 provided that all future street railway corporations should be organized under it. (Sec. 30.)

These provisions make it certain that the Legislature intended that the Street Railway Act of 1867 was from thenceforth to be the organic law of all the street railway corporations of the State, whether previously organized under the Tram Railway Act, or thereafter organized under the Street Railway Act.

The legislature of 1867 regarded a municipal grant or contract under the Tram Railway Act inviolable as far as the rates of fare agreed upon were concerned, and framed the act of 1867 accordingly, by using clear and unequivocal language to the effect that the rates of fare were to be fixed by agreements or contracts between the municipalities and street railway companies.

The street railway sections of the Tram Railway Act as they were first enacted provided that the "regulations" and the "terms and conditions" were to be prescribed by the local authorities "from time to time;" but as amended in 1867 the local authorities were prohibited from making

any "regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railroad in the street in such consent or grant named pursuant to the terms thereof."

The Street Railway Act of 1867 previously passed, at the same session of the Legislature, shows that any disturbance of the rates of fare agreed upon, was to be regarded as an unreasonable impairment of the rights and franchises conferred, for if the rates of fare were to be fixed by the agreement of the parties, and the rates so fixed were not to be increased without the consent of the local authorities, such an agreement was essential to a valid grant, and being made, any interference with the rates by the local authorities could not be regarded otherwise than as an unreasonable impairment of the contract in its most essential and important part. That is to say, the Street Railway Act of 1867, considered in connection with the amendment of 1867 of the Tram Railway Act, completely excludes the view that it was intended to leave the rates of fare open to regulation from time to time, by the local authorities, subject only to the limitation that the rates fixed from time to time should be reasonable rates.

Considering the infantile nature of the street railway business in the State of Michigan at that time, this would be the proper construction of the Tram Railway Act as amended in 1867, even if the Street Railway Act of 1867 had never been passed; but with that act placed at a prior date of the same legislative session, among the laws of the State, there can be no doubt whatever about the construction of the Tram Railway Act as it was finally left by the Legislature of 1867.

The Detroit Citizens' Street Railway Company was organized under the Street Railway Act of 1867, and, as so organized, it has dealt with the City of Detroit.

By ordinances approved October 14, 1892; October 26, September 10 and 17, 1895, it received and accepted direct grants from the City of Detroit.

Record, pp. 135, 136, 137, 138.

The other grants held by it were acquired from street railway companies, some of which were organized prior to 1867 under the Tram Railway Act, and some of which were organized since 1867 under the Street Railway Act of 1867.

What we contend for is this: that no distinction can be made between these grants, and they must all be treated as if they were made under the Act of 1867.

In this connection it must be remembered that after the Street Railway Act of 1867 was passed, viz: November 14, 1879, the Common Council adopted and the Detroit City Railway accepted an ordinance extending the terms and conditions of the ordinance of November 24, 1862, for thirty years from November 14, 1879, and that the right to amend or repeal was to be exercised only in case the company should violate the ordinance.

Record, pp. 121, 122.

This was an adoption and extension of the terms of the old grant after the Street Railway Act of 1867 had become the statutory law governing the municipality and the Detroit City Railway.

II.

The language of Section 20 of the Street Railway Act of 1867, that the rates of fare "shall be established by agreement between such company and the corporate authorities of the city or village where the road is located," is too plain to require or admit of construction or interpretation.

We have been instructed by a careful reading of the opinion of the court as delivered by Mr. Justice McKenna, and the opinion of the dissenting judges as delivered by Mr. Justice White in a recent case from the Supreme Court of Illinois.

Freeport Water Co. vs. Freeport City, 180 U. S., p. 587.

That case involved a construction of the power of municipalities in Illinois to authorize the building of water works for a supply of water "at such rates as may be fixed by ordinance and for a period not exceeding thirty years."

The Supreme Court of Illinois had held that the words "for a period not exceeding thirty years" related to contracts for a supply of water, and did not relate to the rates to be paid therefor, which left the municipalities at liberty

to exercise the power conferred by a general statute of the State authorizing them "to prescribe by ordinance maximum rates and charges for the supply of water."

A majority of the learned judges of the Supreme Court of the United States regarded the decision of the State Supreme Court sufficient to create a doubt about the construction of the statute; and, therefore, to require them to follow the decision of the State court.

Confessedly, the case was peculiar and exceptional. There is nothing in the opinion of the court to support the view that it is to be applied to every State decision construing statutes conferring municipal authority to make contracts.

That is a subject on which the Supreme Court of the United States is still to exercise its own jurisdiction and judgment.

However, the case at bar is radically different and plainly distinguishable.

1. The Legislature of Michigan has never conferred on municipalities any power to fix maximum rates of fare.

2. The Supreme Court of Michigan has never made any decision sustaining any such power, or creating any doubt about the power of municipalities to enter into contracts with street railway companies fixing rates of fare.

III.

It is the settled law of Michigan that municipal corporations, in making grants to street railway, gas and other corporations, for the use of public highways and streets, may enter into irrevocable contracts with the grantees surrendering a portion of their governmental functions.

The nature of these local grants was first determined in a case between the City of Detroit and a gas company.

Maybury vs. Gas Co., 38 Mich., 154.

The City of Detroit claimed that the gas company had forfeited its local franchise, and its city attorney applied to the Supreme Court of the State for leave to file an information in the nature of a quo warranto to enforce the forfeiture.

The opinion of the court is as follows:

> "Campbell, C. J. Leave is asked to file an information in the nature of a quo warranto to deprive the respondent of the franchise, as it is claimed to be, of laying its gas pipes and distributing gas through the streets of Detroit. The ground of the application is that the company has violated some of the terms of an agreement imposing conditions against making combinations with other companies and doing certain other acts, regarded by the City of Detroit as important conditions of its assent to allowing the respondent to use its privileges within the city.
>
> "The statute providing for the incorporation of gas companies allows them to lay pipes through the streets, lanes and squares of any city, town or village where they are located 'with the consent of the municipal authorities of said city, town or village under such reasonable regulations as they may prescribe.' The statutes do not allow an information in such cases as this is claimed to be to be filed without leave, and they contemplate that leave shall only be granted for a plain violation of the laws regulating the corporation, or wrongs amounting to a surrender of its franchises, or 'whenever it shall exercise any franchise or privilege not conferred upon it by law.' (Comp. L., Sec. 7085.)

"The statute contemplates the punishment of corporations for nothing but violations of the laws and policy of the State. In the present instance the State has shown by the incorporating act that public policy is not opposed to and is in favor of allowing gas companies to exist, as they can only exist by having power to lay their pipes. The consent of the municipal corporation is required because the terms on which streets may be safely allowed to be occupied for the purposes of laying gas pipes can be best determined by leaving the regulation to be harmonized with all other exigencies by the authorities controlling their use. The law contemplates that permission will not be unreasonably refused or unreasonably burdened, but regards the municipality as competent to determine the proper conditions for itself.

"The exercise of the power of using streets for laying gas pipes is rather an easement than a franchise, and a similar power is used as often for private drainage and other purposes as for more general purposes. It is a matter peculiarly local in its character, and which should always be to a reasonable extent under municipal supervision to prevent clashing among the many convenient uses to which ways must necessarily be subjected for water, drainage and other urban needs. But the permission to lay these pipes does not differ in any respect from that required for laying railways over land, or ditches through it. *It is not a State franchise, but a mere grant of authority, which, whether coming from private owners or public agents, rests in contract or license, and in nothing else.* A violation of the contract, or an unauthorized intrusion must be redressed as all ordinary wrongs are redressed, by the usual legal remedies. It in no way concerns the State whether the power is granted or withheld, nor whether the corporation has or has not fulfilled its agreements. The injured party has a remedy for any grievance, but the State is no more interested than it would be in the question whether or not a railroad company has lawfully acquired its right of way. This court has heretofore refused to recognize the encroachment of a corporation on a highway as subject to be reached by quo warranto, and we discover no better reason for interfering in the present case.

"The application must be denied."

The foregoing decision has been affirmed in subsequent cases.

People vs. Railway Co., 92 Mich., 522, 524.
Attorney General vs. Railway Co., 96 Mich., 65, 68.

In Michigan, therefore, these local grants do not emanate from the State, through the local authorities as agents of the State. They are not granted by the local authorities acting in their governmental capacity; they are nothing more or less than contracts; and they are to be construed, considered and treated as contracts, just as much as are the deeds, bonds, or other writings obligatory of municipal corporations.

The power of taxation is the highest power possessed by governments. Without it none of the other powers of government could be exercised, yet the Supreme Court of Michigan has on two different occasions sustained the power of the City of Detroit to make the contract relative to taxation contained in the ordinances of November 14, 1879, and January 1, 1887, granted to and accepted by the Detroit City Railway. (Record, p. 128.)

Detroit vs. Railway Co., 76 Mich., 421.
Detroit Citizens' Street Ry. Co. vs. Common Council of Detroit, 85 N. W. Rep., 96; on rehearing, 86 N. W. Rep., 809.

In the first case the City of Detroit brought an action to recover general city taxes from the company on the theory that the ordinance of January 1, 1887, and the prior one of November 14, 1879, so far as they related to taxation, were invalid.

In the other case, also, the direct question of the validity of the agreement as to taxation was involved, and it was sustained. On a motion for a rehearing, the court, in an opinion filed July 2, 1901, by Mr. Justice Hooker, went over the subject again. As the opinion is short and conclusive, we insert it in full.

"Hooker, J. This cause is before us on rehearing, 85 N. W., 96. At the time the city authorized the building of these railroads, the policy of the State was to collect a specific tax in lieu of other taxes. At the same time the Legislature so far modified this rule, that it permitted the city to contract for the payment of local taxes, as a condition to the building of the roads. City of Detroit vs. Detroit City Ry. Co., 76 Mich., 425; 43 N.

W., 447. When made, that was a binding contract on the city for the period which the company was authorized to use the streets. Neither party could change it without the consent of the other. In 1882 the policy of the State was changed, and the provisions relating to the specific tax were repealed, and thenceforth State and county taxes were levied in accordance with the rule pertaining to other property. But this could not affect existing contracts, and the railways theretofore organized had the right to pay local taxes on the basis of such contracts. The City of Detroit made the repeal of the law providing for the specific tax a ground for claiming the right to ignore the contract in relation to city taxes, and dissensions arose, which led to a new arrangement. Thus, in 1887 the Detroit City Railway consented to an adjustment of this controversy by accepting a new ordinance; and this was passed upon in the case of City of Detroit vs. Detroit City Ry. Co., 76 Mich., 422; 43 N. W., 447. In 1885 the same thing had been done in the case of the Grand River Street Railway, and the tax has since been paid on the basis of that arrangement. Now the city is again insisting upon a right to ignore its contract and increase the tax upon this property. We passed upon the question in our original opinion, but counsel ask a rehearing upon the ground that we overlooked the fact that the ordinance of 1887 relating to the Detroit Citizens' Railway and that of 1885 relating to the Grand River are not identical in terms. Both had contract rights that were invulnerable under their original franchises. Both undertook to adjust controverted rights by accepting new ordinances, making new contracts, which this court in the case cited has held might be done. The second of these readjustments contained the provision: 'The above mentioned percentage payments and the tax on lands provided to accrue from January 1, 1887, to the end of the franchise of said railway, shall be paid by the said railway and received by the city in lieu and discharge of all taxes, license fees, and charges of any kind against the property, capital stock, rights and franchises of said company which have been or may be levied, assessed or imposed under any present or future law or authority.' That relating to the Grand River Rail-

way was less specific. It provided for an increased tax on gross receipts. It took the place of a former contract. It contained the provision that, 'said specific tax shall be in lieu of license and other taxes and charges under existing ordinances: Provided, that this shall not in any manner affect the obligations of said company in the matter of paving or repairing pavements as required by existing ordinances.' Had the words 'under existing ordinances' been omitted, there would probably be no claim that the case would not be within the decision of City of Detroit vs. Detroit City Ry. Co., 76 Mich., 425; 43 N. W., 447. The only city taxes collectible were those provided for by existing ordinances. No others could be imposed, except by consent of the railway company. They did not consent, but it was upon the condition that the new tax agreed upon shall be in lieu (i. e., should stand in place of) the pre-existing tax. This did not mean in part, but was a full substitute for the previous contract obligation. The city of Detroit had granted contract rights which it disputed, and a compromise was made, and new contract rights were created. The effect of counsel's contention is that notwithstanding this new arrangement, and the controversies that the parties sought to settle by it, the new contract really settled nothing, and left the council the right to increase the tax at will, by a new ordinance, which might take effect as soon as the same could be adopted. The question was not overlooked. We adhere to the opinion already expressed—that the city must accept taxes under this contract. The motion for rehearing is denied. The other justices concurred."

With such a decision by the State Supreme Court, made since this cause was decided in the court below, before us, there is no existing basis or premises on which the Supreme Court of the United States can reach the conclusion that it was not within the power of the City of Detroit to make an irrevocable contract with the Detroit City Railway and its assigns fixing the rates of fare to be charged during the period the right to make use of the streets was granted.

The fixing of rates of fare by contract is an alienation of the police power. The fixing of rates of taxation by contract is an alienation of the power of taxation. The police power is not more sacred or more inalienable than the power of taxation.

The power to fix rates of fare by contract may be properly regarded as included within, or as a necessary concomitant of, or corollary from, the power to fix rates of taxation by contract.

A demonstration of the existence of a power to fix rates of taxation by contract is a demonstration of the existence of the power to fix rates of fare by contract.

IV.

The fact that the exclusive privilege to build street railways in Detroit attempted to be granted by the ordinance of November 24, 1862, was invalid, in the judgment of the Supreme Court of Michigan, and of the Supreme Court of the United States (171 U. S., 48), *is a conclusive reason why the contract fixing the rates of fare should be held to be irrevocable.*

If the Common Council had intended to reserve the power to regulate, from time to time, the rates of fare, the greatest objection to the exclusive privilege would have been removed. The main, if not the only, object of keeping the city open to the competition of other companies was to enable the city to obtain from them lower rates of fare.

The fact that the rates of fare were irrevocably fixed, was the very element of the contract which made the exclusive privilege attempted to be granted, obnoxious, and of such a character as not to be within the power conferred on the local authorities by the statute.

If the rates of fare were to be subject to regulation by the Common Council, the exclusive privilege would have been altogether harmless, and it would have been a benefit to the city and the public instead of a detriment or injury.

An exclusive privilege or franchise cannot be regarded as objectionable, and beyond the powers of the municipality, if it is not of itself of such a character as to operate as a restraint of, or restriction upon the municipal authority over the subject matter.

With the rates of fare subject to be regulated according to the varying conditions of business and population, there would be no apparent reason why the city could not deal with the Detroit City Railway or its assigns for new routes, and extensions of old routes, as safely and satisfactorily as with other street railway companies.

The exclusive privilege being held to be invalid, it follows, as a matter of course, that the contract fixing the rates of fare, was and is to be regarded as valid and irrevocable.

The exclusive privilege case referred to is that of the Detroit Citizens' Street Railway Company vs. The Detroit Railway, 171 U. S., 48.

Mr. Justice McKenna, delivering the opinion of the court in that case, said:

> "It is clear that the statute did not explicitly and directly confer the power on the municipality to grant an exclusive privilege to occupy its streets for railway purposes. It is urged, however, that such power is to be inferred from the provision which requires the consent of the municipal authorities to the construction of a railway under such terms as they may prescribe, combined with the provisions of the constitution, which, if they do not confer a power independent of the Legislature, strongly provide for and intend local government. The argument is strong, and all of its strength has been presented and is appreciated, but there exist considerations of countervailing and superior strength. That such power must be given in language explicit and express, or necessarily to be implied from other powers, is now firmly fixed. There were many reasons which urged to this—reasons which flow from the nature of the municipal trust—even from the nature of the legislative trust, and those which, without the clearest intention explicitly declared—insistently forbid that the future should be committed and bound by the conditions of the present time, *and functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges.*"

After referring to a number of authorities, the learned Judge concluded as follows:

> "Easements in the public streets for a limited time are different and have different consequences from those given in perpetuity. Those reserved from monopoly are different and have different consequences from those fixed in monopoly. *Consequently those given in perpetuity and in monopoly must have for their authority explicit permission, or, if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indispensable to them.*"

Here we have positive proof that the other monopolistic elements of the grant were the controlling reason for the decision of the court, that the exclusive privilege was not within the powers of the municipality.

These monopolistic features were:

(1) Permission and authority to construct and operate street railways on certain specified streets.

(2) Immunity from taxation except at certain agreed rates.

(3) Authority to charge certain fixed tolls or fares.

The existence of these most characteristic elements of the grant having been established in a case between the same parties for the purpose of showing that the power to confer an exclusive privilege must be rejected because not indispensable to the power to make the grant, it cannot now consistently be held, that they do not exist, and that there was no basis or groundwork for the prior decision.

Authority to make use of streets for the purposes of a street railway would be an idle and worthless right unless the grant was accompanied with authority to charge fares or tolls. Power to make the grant carries with it the power to agree upon the fares or tolls to be charged. No other kind of grant would ever be accepted by anybody; and therefore power to fix the rates of fare by con-

tract is indispensably coupled with the power to make the grant.

The street railway act of 1867 was in force when the ordinance of November 14, 1879, extending the life of the grant was passed by the Common Council and accepted by the company; and that act expressly declares that the rates of fare "shall be established by agreement between such company and the corporate authorities of the city or village where the road is located."

V.

The reservation made by Section 19 of the ordinance of November 24, 1862, to the Common Council of "the right to make such further rules, orders and regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways," was not intended to apply, and does not apply, to taxation or rates of fare.

The power reserved is of the same nature as that reserved by section 19 of the street railway act of 1867 to make further rules and regulations in regard to grading, paving and repairing the streets, etc.

In 1891 an agitation for three cent street railway fares was started in the City of Detroit. To accomplish that result, litigation was commenced by the city against the Detroit Citizens' Street Railway Company to have the ordinance of November 14, 1879, extending the grant of the Detroit City Railway for thirty years from that date, declared void, on the ground that the Common Council had no authority to make a grant beyond the life of the corporation to which it was made.

The position of the city was sustained by the United States Circuit Court for the Eastern District of Michigan in an opinion by Taft, Circuit Judge, Swan, District Judge, dissenting.

> Detroit vs. Detroit Citizens', etc., Co., 60 Fed. Rep., 161.

On appeal to the United States Circuit Court of Appeals for the Sixth Circuit, the decree of the Circuit Court was reversed.

> Detroit Citizens', etc., Co. vs. Detroit, 22 U. S. Appeals, 570.

The late Mr. Justice Jackson of the Supreme Court of the United States participated in this decision. At p. 600 the court say:

> "The power to make an irrevocable contract, giving an easement of some considerable duration, is an inseparable incident in any scheme for furnishing such public facilities as a street railroad. The duration of such grants must be a question of discre-

> tion to be exercised by some public authority. That the exercise of that discretion should be left to the local government, as a question of purely local interest, seems most consistent with the proprieties of the case, and most in accord with the decentralizing policy so peculiar to the State of Michigan."

The Supreme Court of the United States refused to grant a certiorati to review the decision of the Court of Appeals.

The city endeavored to reopen the litigation in the State Courts, but the Supreme Court of Michigan, January 22, 1895, held the decision of the United States Court of Appeals to be final.

Detroit vs. Attorney-General. 103 Mich., 612.

The litigation thus came to an end. During the time it was in progress and for a number of years afterwards no one in the City of Detroit claimed that the common council had power to fix street railway rates of fare.

It was not until August 16, 1899, that the three cent ordinances in question in this case were passed.

The theory of municipal power on which they are based is evidently an afterthought on the part of the City of Detroit, to which it was brought by the defeat it received in the litigation to which we have referred.

The truth is that from 1862 to 1899 the City of Detroit as well as the Detroit City Railway and its assigns have treated the rates of fare fixed by the ordinance of November 24, 1862, as irrevocable by the city, and an inviolable part of the contract between the parties.

The legislature entertained the same view when it framed the Street Railway Act of 1867, for it is not reasonable to believe that it contemplated there should be such a radical difference between that act and the Tram Railway Act.

In construing contracts, the courts endeavor to arrive at the intention of the parties. With that object in view it is not possible to reach the conclusion that the rates of fare agreed on were not to be irrevocable.

VI.

As a business proposition, the theory that the rates of fare were to be reasonable under common law rules enforced by ordinances passed from time to time by the Common Council is not consistent with the subject matter of the contract and the relations of the parties to it.

Detroit was a growing and progressive city, and desired street railways, which were not to be remunerative investments for a number of years. The parties agreed to a limitation on the fares to be charged so that they could not exceed five cents for each passenger, which excluded any greater rate, if a fare of five cents was found to be unreasonably low. The business theory was that while remunerative and compensatory fares were not to be expected during the earlier years of the grant, they would be forthcoming during the later part of the grant.

This is the financial history of nearly all enterprises in the west involving large investments. Where the municipality as the representative of the public has had the benefit of the contract during the primitive and experimental stage of the improvement bargained for, it is nothing less than repudiation, for the municipality to refuse to be bound by the contract, when it has become valuable to the other contracting party.

VII.

The proposition that the rates of fare were irrevocably fixed for the period covered by the grant is in no sense a violation of the common law obligation of the street railway company to carry passengers for a reasonable fare.

The question what is a reasonable fare is necessarily a somewhat difficult one. What may be reasonable at one time may not be at another. The municipal authorities under the laws of Michigan represent the public, and when they agree to a rate of fare for a considerable period of time, it is to be presumed that the rate so fixed is regarded as reasonable when the whole period to be covered by it is considered.

The contract of the parties merely settles the question for the period agreed upon; and it precludes any dispute or controversy over the question for that period.

It might be more wise in an old and firmly established community to leave the question of reasonableness open to be fought over from time to time as the varying conditions of population, trade and business might arise; but in new and growing cities and villages desiring street railway facilities as a means of growth and development, it has very generally been found expedient to settle the question by contract.

In that way the cities and villages of Michigan and of most of the western states and many of those of the eastern states, have first obtained their street railways, water works, and gas works, and to now learn that the contracts so made are invalid would produce the most serious results, and be a greater injury to the municipalities of the country than to hold them to the contracts they have so generally and publicly entered into as inducements to investments in that kind of property.

VIII.

The fact that the original ordinance of November 24, 1862, *and the ordinance of November* 14, 1879, *extending, as modified, the terms and conditions of the grant, were each limited to thirty years from their respective dates, shows that the rates of fare agreed upon were to be irrevocable during these periods of time.*

We again quote the concluding paragraph of the opinion of the court in the exclusive privilege case, 171 U. S., 48, 55:

> "*Easements in the public streets for a limited time are different and have different consequences from those given in perpetuity. Those reserved from monopoly are different and have different consequences from those fixed in monopoly.* Consequently those given in perpetuity and in monopoly must have for their authority explicit permission, or, if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indispensable to them."

These words certainly and clearly assume as the basis of the judgment of the court, that the grant to use the streets was given in perpetuity, and that the terms and conditions under which the grant was to be exercised were agreed upon for thirty years only.

In other words, that the parties contracted on the theory that the operation of the roads was not to cease at the end of the thirty years, but that the parties would agree anew upon terms and conditions, or in default of a mutual agreement, the street railway company or its assigns could continue to operate the roads upon such terms and conditions as the common law and statutory obligations of the company might impose upon it.

We believe this to be a correct statement of the rights of the parties, but in view of the attitude of the authorities and inhabitants of the City of Detroit on this question for the last ten years, we doubt very much whether any such view of the case will be conceded by the very able and learned corporation counsel on the argument of this cause.

Whatever may be the final outcome of this question—and it should not be disposed of as a mooted question—

it is apparent that when the parties agreed upon the terms and conditions imposed by the ordinance of November 14, 1879, they fully understood that the terms and conditions were to be irrevocable for thirty years.

This is very strongly indicated by the provision of the ordinance of November 14, 1879, that

> "The right to amend or repeal this ordinance in case of its violation by the company is expressly reserved."

While the power reserved by Section 19 of the ordinance of November 24, 1862, was continued in force for such mere rules and regulations of the common council as should not interfere with the substantial terms and conditions of the grant, it was modified, if it ever had any greater meaning, by the later ordinance.

That the ordinance of November 14, 1879, did modify the ordinance of November 24, 1862, in some respects other than in the matters of taxation and paving has been established by the Supreme Court of Michigan.

> People vs. Detroit Citizens' Street Ry. Co., 116 Mich., 132.

Section 4 of the ordinance of November 14, 1879, concludes with these words:

> "And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order."

It was held that this clause abrogated the limitation on the powers of the common council contained in Section 7 of the ordinance of November 24, 1862, to the effect that the common council should not require the company to run its cars oftener than once in twenty minutes.

> Record, pp. 29, 35, 36.

At the time of the extension of the ordinance of November 24, 1862, it had thirteen years to run, and in consideration of the modifications agreed upon, the contract was extended for seventeen years beyond the thirty years fixed by the ordinance of November 24, 1862, that is for thirty years from November 14, 1879.

Unless the terms and conditions were to be mutually binding for that period, the contract of the parties is incomprehensible.

Why such particularity of detail as to all the essential elements of the contract, if the exact and precise terms agreed to were to have no binding force or efficacy; and if the common council was to have a reserved power to regulate the rates of fare, why should a time limitation be made a part of the agreement?

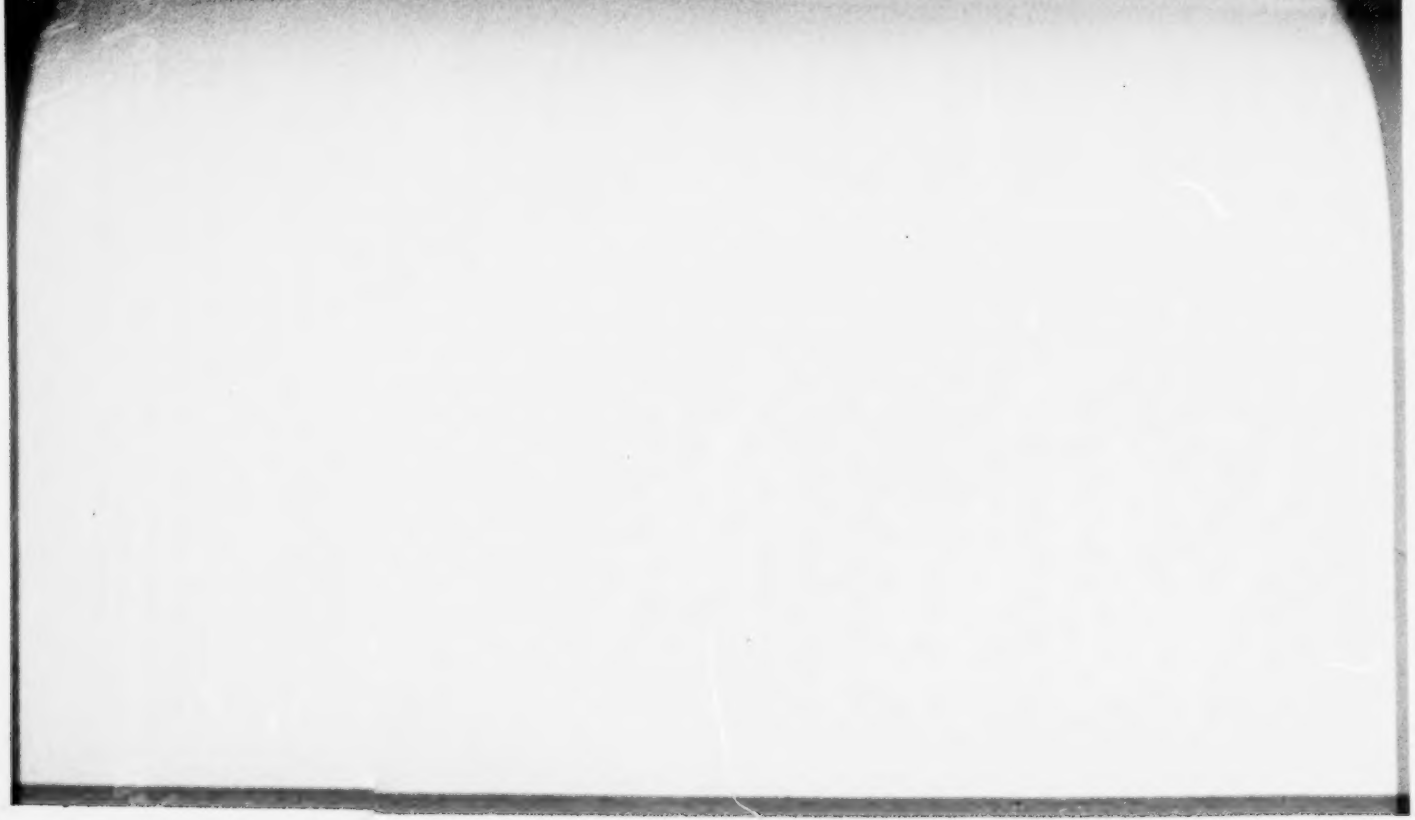
These are pertinent questions.

As there are no State decisions to the contrary to which consideration must be given, and deference be paid, we submit that the contract should be construed according to the plain understanding of the parties to it.

We have prepared this brief without any intention of writing an essay on street railway law, or of citing any more authorities than were necessary to illustrate and set forth in plain view, the exact questions involved in the case.

We respectfully submit that the decree below should be affirmed.

FRED A. BAKER,
Counsel for Appellee.



152.

Add'l Brf. of Defendants & Appellants

for Appellee.

Filed Oct. 28, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 152. In Equity.

THE CITY OF DETROIT, WILLIAM C. MAYBURY, MAYOR; CHARLES FLOWERS, CORPORATION COUNSEL, DEFENDANTS AND APPELLANTS,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, COMPLAINANT AND APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

ADDITIONAL BRIEF OF M. BRENNAN AND JOHN C. DONNELLY FOR APPELLEE.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1073

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 152.

THE CITY OF DETROIT, WILLIAM C. MAYBURY, MAYOR; CHARLES FLOWERS, CORPORATION COUNSEL, APPELLANTS,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, APPELLEE.

ADDITIONAL BRIEF FOR APPELLEE.

It is proposed herein to discuss some of the legal propositions advanced in the briefs already filed. The facts are quite fully and accurately set forth in the other briefs, and therefore no extended reference will be made thereto.

The questions of law we will discuss are:

First. Under the terms of the tram railway act the city has not the power to enact the ordinances of August 16, 1899, compulsorily reducing rates of fare and requiring transfers to other routes for one fare.

Second. The provisions of the street railway act take the fixing of the rates of fare for carriage of passengers on street railways from the domain of legislative or governmental authority, so far as the municipality is concerned, and places it wholly within domain of contractual authority. Its provisions fix the exact measure and mode of exercise of the power of the city in the matter, and by express language its protection is extended to all existing companies.

I.

For convenience we will again briefly state the history of the sections of the train or tram railway act under which the original and first grants were made by the city to the companies. As at first adopted the tram railway act applied solely to corporations organized thereunder for the carriage of goods and merchandise, but in 1861 the legislature added what stands as section 33, which then read and now reads as follows:

> "It shall be competent for parties to organize companies under this act to *construct* and *operate* railways in and through the streets of any town or city in this State."

At the same time the legislature adopted what then stood as section 34, which as then adopted read as follows:

> "All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them, provided that no such company or corporation shall be authorized to *construct* a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations, and upon such terms and conditions as said authority may from time to time prescribe."

The law stood thus when the parent street railway companies were organized, and the first grants of rights to construct railways in the streets were made. These sections remained unamended until 1867, when the legislature amended section 34 so that it reads as follows:

> "All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them, provided that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regula-

tions, and upon such terms and conditions as said authorities may from time to time prescribe. *Provided further*, That after such consent shall have been given and accepted by the company or corporation to which the same has been granted such authorities shall make no regulations or conditions whereby the *rights or franchises so granted* shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, *maintaining and operating* such railway in the street in such consent or grant named *pursuant to the terms thereof*."

The provisions of this act and those of the street railway act proper, to which more extended reference will be hereafter made, are the only legislative sources from which the city draws its power to deal with the street railway matter. Neither at the time the grants were made nor at any time since then has there been any provision in the city charter relating to the subject-matter of street railway grants, and any general authority which the city may be said to possess under the charter is derived solely from that provision giving it the control of the streets and highways and the use thereof. This much is decided in direct terms by the Federal court of appeals for the sixth circuit in Detroit City Railway *et al. vs.* The City of Detroit (64 Fed. Rep., 628).

Thus considered, the provisions of the tram railway act quoted have a two-fold character:

(*a.*) It is a grant of power to the city to consent to the construction of a street railroad in any street of the city.

(*b.*) It is a grant of authority to individuals to acquire the franchise of being a corporation, and as a corporation to possess and enjoy the additional franchise of constructing and operating a street railway for the carriage of passengers for hire.

They were so treated and interpreted by the court of appeals in the case above cited, and our contention is that the sections as they stood prior to the amendment of 1867 did not declare the legislative intention that the city should have the power of independently legislating upon the right of the company to exercise its franchise to operate a street railroad for hire, and that if the sections as they were originally adopted were susceptible of a construction which

would give to the city that power at that time, the amendment of 1867 effectually withdrew that power from the city.

Considering section 34 in its character of a grant of power to the municipality, we must treat it in the light of the well-settled rule that as to municipal corporations their charters are not contracts, and so far as the extent, character, and duration of their powers are concerned they are wholly subject to the will of the State, and such power may be increased, diminished, modified, abolished, or withdrawn at the legislative will. This is more aptly stated by this court as follows:

> "Municipal corporations are created by the legislature, and they derive all their powers from the source of their creation; and these powers are at all times subject to the control of the legislature. Such powers also, in the absence of any constitutional regulation forbidding it, may be enlarged or diminished, extended or curtailed, or withdrawn altogether as the legislature may determine."

It is stated in Booth on Street Railways in the following language:

> "The legislature may by general act alter or amend charters of municipal corporations whether granted by general or special act; and such alteration will affect and control their powers with reference to corporate franchises previously granted."

Under this doctrine the power of a municipality over any given subject-matter must be measured according to the terms of the charter or other legislative grant or act as it stands at the time the exercise of the power is attempted. This has been expressly declared in a comparatively recent street railway case in Michigan, and the extent to which this doctrine is carried is well illustrated by the decision of this court in New Orleans *vs.* New Orleans Water Works (142 U. S., 79).

It is claimed by the city that when the grant was made to the Detroit city railway, in 1863, a fair interpretation of section 34 of the act as it then stood shows an intent upon the part of the legislature to confer upon the city the authority from time to time to regulate the exercise of the fran-

chise which the company received from the State of the right to operate a street railroad for the carriage of passengers for toll or hire, independently of and without attaching the same as a condition to any consent contemporaneously made for the construction of a street railway in some street of the city. Necessarily this claim must be supported by the further claim that this authority has never been modified or withdrawn, either by the amendment of 1867 or by any of the provisions of the general street railway act, which is *in pari materia* with the street railway provisions of the train railway act, and was passed at the same legislative session as the amendment of 1867. Our contention is that neither the provisions of section 33 or 34, as they stood in 1863, nor those sections, as amended in 1867, conferred upon the city any such extraordinary power as that claimed. The language of these two sections will not, in our opinion, bear such an interpretation, and we invite the attention of the court to a careful reading thereof.

Section 33 provides that companies may be formed under the act to *construct* and *operate* street railways in the streets of towns and cities. It will be noted that the term "construct" and the term "operate" are both employed in this section, and, as was pointed out by the court of appeals in the case cited, they must be considered as separate and distinct grants of authority, in view of the provisions of the next section. When we examine section 34, as it stood in 1863, we find the language to be:

> "All companies or corporations formed for such purposes shall have the exclusive right to *use* and *operate* any street railway constructed, owned or held by them, provided that no such company or corporation shall be authorized to *construct* a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city."

It will thus be seen that the power of the municipality to prescribe terms and conditions from time to time was limited to terms and conditions upon which the road might be constructed as distinguished from terms and conditions that affected the right of the company in the exercise of its franchise to operate the road for tolls, and the point we are

endeavoring to make in thus calling attention to the specific language, and the variation between the language contained in section 33, conferring the legislative franchises, and that used in section 34, is that the legislature did not intend that the city should have any power of a legislative character to regulate, independent of the company and independent of any consent to construct a street railway, the exercise of the franchise of operating the road and collecting tolls. The distinction between the two rights and the relative distribution of authority to regulate them as between the State and the city, and the extent of the power conferred upon the city by the legislature by the terms of section 34, are clearly pointed out and emphasized in the decision in the case above referred to, which involved the validity of this very contract. The argument of the counsel for the city in that case was that the franchises possessed by the Detroit city railroad, viz., the corporate franchise, the franchise of operating a street railway for hire, and the franchise to construct, only became operative upon the company obtaining the consent of the city to occupy a street with its tracks. Coming to the discussion of this subject, the learned court says (p. 640):

> "We must begin with the observation that it is an error to assume that under either of the street railway acts the operativeness of any of the franchises conferred upon street railroad companies is made dependent upon the consent of municipalities. The power to consent is not a power of consent to the operation or vitality of the charter franchises. The consent which the city is to give is a consent to the construction of any such road in its streets."

After discussing some of the reasons which appeared to influence the lower court in reaching an opposite conclusion, and referring to the language of the sections, the learned court continues (p. 641):

> "To the practical operation of a street railway three things were essential under the law of Michigan. These were:
>
> "First, corporate capacity; this because under the law of that State there seems to have been no provis-

ion by which natural persons could directly acquire the other requisite franchises.

"Second, a franchise to operate the road and take tolls.

"Third, a right to occupy particular streets with the necessary tracks and equipments.

"These three requisites are *distinct and separable.* The first two are essential franchises which could only come from the State. The third and equally essential requisite could not come from the State, and if acquired at all must come from the municipality within which it was proposed to exercise its substantial franchises."

Speaking further, on page 642, the court says:

"It is evident that the legislature could not grant to any street railway the right to construct and operate its road upon any particular street. It may provide for the incorporation of such companies and endow them with the franchises necessary. For the necessary street right they must be referred to the only authority which can grant such privileges, the local government of the municipality in which it is proposed to operate such road. It may confer power upon all such municipalities to grant or withhold such *easements.* The right to make such grants may be conferred subject only to such terms and conditions as the municipality may impose, or it may surround the power with such limitations as it shall deem wise."

Further, on page 643, he says:

"The just, reasonable and fair interpretation of the provision in each act requiring consent is that nothing in either act shall be construed as authorizing any such road to occupy the streets of any city with its tracks and cars without first obtaining from such city the *right of way necessary,* which right may be granted by the city upon terms and conditions satisfactory to it, and acceptable to the company, and that this consent to such construction and occupancy shall not be subject to repeal or alteration when granted and accepted."

Further, on page 643, the court says:

> "The power to consent is in and of itself the power to *grant an easement. The consent is an easement*, and the act of consenting to the use of the streets for railway purposes is the act of *granting an easement* in the streets. Consent to such use of the streets constitutes a *typical easement, and the right granted thereby is an interest in realty, being an incorporeal hereditament.*"

Later on he states:

> "Now, if it (the legislature) had granted the right to enter upon a particular street and occupy it for such purposes without in terms mentioning the consent of the city, it will be agreed that there was an implied power granted the city authorizing it to consent; but when as in these two acts it is expressly provided that the consent of the city must be first obtained, and then the legislature proceeds expressly to state how that consent shall be given—that the terms and conditions must be such as are satisfactory to the city, and that after such consent has been given and accepted, the right, franchise or easement shall not be destroyed or unreasonably impaired by any regulation or conditions to be made thereafter by the city—it seems too obvious for argument that a power is expressly given."

Again he says:

> "Our conclusion upon this branch of the case is that the legislature meant by the term 'consent' no more and no less than would be meant *by right of way, or easement.* '*Consent*' in the connection used *is synonymous with easement or right of way.*"

These quotations from the opinion of the court of appeals, and many other sentences and statements contained therein which might be quoted, clearly show that that court had in mind the clear distinction between the subject-matter over which the city was given power and the matter of the regulation of rates of fare. They state over and over again that

a power was granted to the city by these acts, and as often state the power to be not the power to independently regulate rates of fare, but the power to grant an easement. As pointed out by that court, the franchise of being a corporation and the franchise to operate a road for tolls are franchises and rights granted directly by the State to the corporation, and are of such a character that the municipality could not grant them, and the operativeness of which, to use the language of the court, did not spring from any consent upon the part of the municipality. If the municipality could not grant either under the terms of the tram railway act or from lack of capacity in the legislature to confer the authority upon it to grant the franchise of operating a street railroad and collect tolls therefor, it does not seem reasonable that the legislature should have intended that that franchise which it alone could and did grant should be subject to the independent legislation and control of the municipality.

The third essential to street railroad operation in Michigan pointed out by the court, viz., the right to occupy any particular street with a track, was one which did depend upon the consent of the municipality, so far as any particular street was concerned, and it is evident that that was the subject-matter which the legislature intended should be left to the jurisdiction of the municipality; and while in the exercise of that jurisdiction the municipality might insist, as a condition of its consent, that a limit should be placed upon the rate of fare to be charged, still it does not follow that the city would have the power by independent enactment, not conferring any new street rights, and long after the railway was constructed according to the terms of the original consent, to regulate the rates of fare to be collected by the company in the exercise of the franchise which it received from the State.

The power given the city to regulate was the power to regulate the extent, mode of use, and enjoyment, location, and character of the franchise or easement which the company should receive and which the city could grant, and not the power to regulate, curtail, limit, or destroy the franchise directly granted by the State, viz., the franchise of carrying passengers for hire on the road when constructed.

And so we say that under the section as it stood in 1863 such regulations, terms, and conditions as the municipal au-

thorities might prescribe from time to time must be confined and have reference to the question of construction alone.

We must not be understood as here claiming that the legislature could not by express enactment confer the power upon the city to enter into an agreement with the company fixing the maximum rate of fare. What we do contend for is that, by a fair interpretation of the provisions of the tram railway act as they stood up to 1863, no such power was conferred upon the municipality, but, on the contrary, the power conferred upon it was limited to dealing with the question of construction.

2. But treating the matter as one left in doubt, and possibly a doubt which could be resolved in favor of the view of the city as to the proper construction of section 34 of the tram railway act, as it stood when the grants in question were made, we cannot conceive how there can be any doubt as to the extent of the city's power after the amendment of 1867. Bearing in mind that the only right or franchise which the city had the power to *grant* under the act was the franchise or easement in the street, we are aided at arriving at the intent and meaning of the legislature in adding the proviso of 1867 to section 34. The language is as follows:

> "That after such consent shall have been given and accepted by the company or corporation to which the same is granted such authorities shall make no regulations or conditions whereby the *right or franchise so granted* shall be destroyed or unreasonably impaired."

Under the decision of the court of appeals, what right or franchise is GRANTED by the city? As pointed out, the only right or franchise granted by the city is the easement in the street, and, so far as that easement is concerned, the legislature in the proviso has said that the municipal authorities shall make no regulations or conditions whereby that easement shall be destroyed or unreasonably impaired. But the legislature goes still further and says that after the consent shall have been given and accepted by the company the city authorities shall make no regulations or conditions whereby such company or corporation shall be deprived of the right of *constructing, maintaining, and operating* such rail-

way in the street in such consent or grant named, *pursuant to the terms thereof.* It would seem as though the legislature clearly recognized the two classes of franchises in this provision: (1) The franchise or easement in the street granted by the city. This they said should not be destroyed or unreasonably impaired. (2) The franchise of maintaining and operating a railway for hire, which, as pointed out by Judge Lurton, was a franchise which emanated from the State alone, and as to this franchise the municipality was prohibited from making any regulation or condition which would deprive the company of the absolute right to maintain and operate the railway in the street in the consent or grant named according to the terms of the grant itself. Therefore, if the maximum rate of fare fixed by the grant was one of the terms or conditions attached to the exercise of the franchise of operating the road, then any attempt of the city to reduce that rate of fare without the consent of the company was a deprivation of the right of the company in violation of the terms of the statute as completely as though the city had undertaken to require them to carry passengers for no fare. And certainly the requirement that they should give two rides for one fare was a clear violation of the terms of the grant. We are not without extrinsic but potent aids in learning what the legislative intention was in the enactment of the proviso of 1867. At the same session of the legislature, and but a few days prior thereto, that body enacted a comprehensive law for the incorporation of street railway companies proper, and for the regulation of the business of constructing, maintaining, and operating street railways in the streets of the cities of Michigan. Section 20 of that act provided as follows:

> "The rates of toll or fare which any street railway may charge for the transportation of persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

Section 14 of the act provided:

> "After any city or village shall have consented as in this act provided to the construction and main-

> tenance of any street railways therein or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

Section 29 of the act provided as follows:

> "All companies or organizations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

Section 30 provided as follows:

> "All companies and corporations hereafter formed for the purpose of constructing, owning, or using any street railway for the transportation of persons or passengers in any city or village shall be organized under the provisions of this act, and shall be subject to the provisions of chapter 73 of the Compiled Laws of this State, and to all other general laws of this State relating to corporations, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend or repeal this act at any time."

It is evident from the provisions quoted that the legislature clearly had in mind, among other things: (1) That after the city or village should consent to the construction and maintenance of a street railway in its streets, and the same was accepted by the company, the same became a binding contract in all respects, which the city could not revoke, or so treat as to deprive the company of any of the rights or privileges conferred thereby. (2) That the power of the city to deal with the question of rates of fare on any such street railroad should not be a legislative power to be exercised independent of the company, but should be a contractual power which should be exercised in connection with the company, and consequently a power, the exercise

of which was limited and controlled by the mode of exercise pointed out by the statute. (3) That the provisions of the street railway law upon this subject, so far as they confer powers, rights, protection, and privileges upon companies organized thereunder, should apply to all companies that had theretofore been organized for street railroad purposes under the tram railway act. (4) That thereafter no companies should be formed for street railway purposes under the tram railway act, but that all street railroad companies thereafter formed must be organized under the street railway act. Thus showing a clear intention upon the part of the legislature to make uniform the laws applicable to the street railway business, whether the companies carrying on the business were formed under the tram railway act or under the street railway act. This aids us in reaching the conclusion that out of abundant caution the legislature adopted the proviso of 1867, by which the grants theretofore made to the companies organized under the tram railway act should be as free from municipal interference and the rights granted thereby should be as fixed and vested as were those which companies might obtain under the terms of the street railway act proper.

That the power of the city under the Michigan statute, and statutes of like legal import, is a power to grant an easement.

Detroit Citizens' St. R'y Co. *vs.* Detroit, 124 Mich., 453.
Detroit Citizens' St. R'y Co. *vs.* Detroit, 54 Fed. R., 628.
Knoxville *vs.* Africa, 77 Fed. R., 501.

A case directly in point is—
Knoxville *vs.* Africa, 77 Fed. R., 501,

decided by the circuit court of appeals for the sixth circuit. The court had under consideration a street railroad statute precisely like the Michigan one, so far as the power of the city was concerned, namely, that the consent of the city to occupy the street should be obtained. On page 507 the court says: "A right of way upon a public street, whether granted by act of the legislature or ordinance of city council, or in any other valid mode, is an easement, and as such is a property right, capable of assignment, sale and mortgage, and entitled to all the constitutional protec-

tion afforded other property rights and contracts." On page 508 the court says:

> "What is the extent of the power intrusted to the city government? The answer is plain; it is to consent to the occupation of the streets of the city between the termini named in the charter and within the general route designated therein as shall be deemed in the interest of the public. The consent when given by ordinance duly passed, constitutes a grant of a right of way on and over streets named and described in the ordinance, and constitutes a contractual ordinance conferring an easement which is irrevocable. By such an ordinance an incorporeal hereditament is created and vested in the grantee. Until 'consent' has been given by ordinance, prescribing the terms upon which the streets desired may be occupied, no street right exists in the railroad corporation. It is a corporation endowed with the substantial corporate franchise essential to the operation of a street railroad, but it is unable to exercise this franchise because it has no right to enter upon the streets and there construct the necessary tracks and appliances needful to the maintenance and operation of a street railroad. The power to 'consent' and the power to prescribe the 'terms' upon which it will consent implies the power to refuse to consent, or to consent only upon terms and conditions deemed wise, including the right to impose such limitation upon the duration of the grant as shall seem proper to the legislative discretion. City of Detroit *vs.* Detroit Citizens' Street Railway Co., 26 U. S. App., pages 570–599; 12 C. C. A., 365, and 64 Fed., 628; Louisville Trust & Banking Co. *vs.* City of Cincinnati (decided at present term), 76 Fed., 296. The delegated power to be exercised by the city government is not an unlimited one. It is the power to consent to the occupation of the public streets by a street railroad having a definite beginning and ending, and whose general route is designated in its charter. Within those limits it may exercise discretion. Beyond those limits its power does not extend."

II.

The provisions of the general street railway act of 1867 assist us in more than one way to a rightful conclusion as to the intention of the legislature with reference to the power of the municipality on the question of the rates of fare on street railways.

(*a.*) The street railway provisions of the train railway act and the general street railway law are *in pari materia*. The second proviso of section 34 of the train act and the general street railway law were enacted at the same session, and were parts of the same scheme of legislation, having for its object the regulation of the business of carrying passengers for hire on street railways in cities and villages.

(*b.*) By express provision the powers, rights, protection, and privileges conferred by the street railway act on companies organized thereunder are extended to street railway companies organized and existing under any law then in force.

1. That the two pieces of legislation are *in pari materia*, and that it was clearly the intent of the legislature to make uniform regulations for the conduct of the street railway business, we readily see when the provisions of the two acts of that year are read in the light of the journal history of their enactment. The most casual examination of the street railway provisions of the train railway act, as they stood prior to 1867, discloses that they were insufficient and meager for the purpose designed, and it must be evident that the legislature, when it undertook to deal in a more comprehensive manner with the street railway subject, were of opinion that more comprehensive provisions and more clearly defined limitations on the powers and rights of the cities and companies must be established. We claim that this was the purpose of the legislature in 1867, and that in the legislation of that year it was undertaken intelligently and permanently to provide for the regulation of the street railway business, which was then becoming important. The cities of the country were then growing rapidly, and street railways were becoming more and more an important convenience in urban transportation.

An examination of the legislative journal for 1867 shows that a bill was introduced in the senate of that body to

amend section 34 of the train railway act and to add several sections to the act. It was duly referred to a committee, which, at a subsequent date, reported it back with the present street railway act as a substitute therefor, and in the usual course of legislative business the substitute was passed by the senate as it stood, until recently amended. A bill had been introduced in the house of representatives of that year having the very general title of "A bill to further amend an act to provide for the construction of train railways," which in the course of business in that house was passed before the street railway act which had passed the senate reached the house. As enacted by the house, the bill contained no amendment whatever of section 34 and made no reference thereto. The senate, apparently adhering to its idea of limiting the power of the municipalities to interfere with existing or accepted grants after the same had been accepted, amended the house bill by inserting another section therein, which consisted of a re-enactment of section 34, as it then stood, and adding the second proviso as an amendment thereof. It will be remembered that the second proviso is the one which we have argued effectually withdrew from the municipalities any power which they might have had under the section as it theretofore stood to interfere with or to alter the terms of an existing and accepted grant. As thus amended, the house bill was returned to the house, the amendment agreed to, and the bill in that form became a law.

It is very evident from these facts that the legislature clearly intended that all street railways in Michigan should be subject to the provisions of the general street railway law, and even though we had not in the street railway act the expressly declared intention of the legislature that such was its purpose, there is sufficient in the history of the legislation to justify the claim that such was the intention. The fact that the bill first introduced, which contained what was apparently a comprehensive scheme of amendment to the street railway provisions of the train railway act, was abandoned for a more comprehensive and appropriate method of regulating the business by the framing of a new bill upon the same subject-matter which was put forward expressly as a substitute therefor, taken in connection with an examination of the various provisions of the substitute, clearly indicates an intention on the part of the legislature to

include within the scope of the legislation finally adopted all existing street railway grants, and to limit the power of the municipalities over them.

It is not necessary for us to cite extensively from the decisions in support of the proposition that where two acts are *in pari materia*, or where it can be gathered from the provisions of the two acts that it is the intention of the legislature that both shall apply to the subject-matter, it then becomes simply the duty of the court to examine the provisions of both acts, learn what the legislative intent was, and declare whether or not such intent has been effectually carried out. It will be noted that when the legislation of 1867 was enacted the old grants or easements from the city were in force by virtue of the original grants, and there was no provision in the train railway act, as it stood prior to 1867, nor in any of the grants from the city under that act, requiring a written acceptance thereof by the grantee. When the grants were extended in 1879, in 1880, and in 1885, at which time the street railway act of 1867 was in force, it will be noted that in each instance the ordinance followed the literal requirements of that act, and required the filing of a written acceptance of the grant by the grantees. It will also further be noted that in all ordinances thereafter adopted making grants of additional routes and easements on additional streets this provision of the street railway acts is strictly adhered to. A striking and notable example of this is found in the grant to the Detroit city railway in 1889 of a number of new routes. The city attached as a condition to the new easement that the company should, during certain hours in the day, carry people at a very much reduced rate of fare, and should extend the transfer privilege over a large number of its existing routes, as well as the new routes granted, and the further condition that the grant should be void unless the company should, within a certain period of time, file a written acceptance in which it would agree to the reduced rate of fare and the extended transfer privileges. It will also be noted that the requirement of an acceptance by the grantee of the terms of a grant or easement under the tram railway act is first introduced into that act by the amendment of 1867 to section 34. This goes to show that the legislature attached considerable importance to the requirement of an acceptance of the grant by the company with the evident purpose of placing the relations between the city

and the grantees upon a contractual basis, and effectually taking away from the municipality any right or authority independently of the company to alter or lessen the rights of the grantees under the grants. It is strong evidence of an intention upon the part of the legislative body to place the rights of companies under the tram railway acts and companies under the street railway acts upon the same secure and fixed basis of inviolability.

2. Since writing the foregoing we have received an additional brief from counsel for the appellant devoted largely to a discussion of the question of the legislative intent in the enactment of the street railway law to bring all existing companies and roads within the protection of the provisions of that act. In his brief it is in substance conceded that section 29 of the street railway act expressly declares the intention of the legislature that all street railway companies organized under the tram railway act shall be entitled to the rights, powers, protection, and privileges of the street railway act, but the claim is made that this intention was not effectuated for the reason that section 29 was not a valid enactment under the constitution of Michigan, in that it was in violation of section 20 of article 4 of the constitution of Michigan that "No law shall embrace more than one object which shall be expressed in its title."

On pages 8 and 9 the position of counsel is stated as follows: "The title of the street railway act, 'An act to provide for the formation of street railway companies' under the above rules, is no doubt sufficient to authorize the organization of street railway companies thereunder, and to define the rights, powers, privileges, duties, and liabilities of such companies; but such title is not broad enough to warrant the sweeping into such act of corporations not formed or organized thereunder, but which are governed and controlled by different provisions of law." A number of decisions of the Michigan supreme court are cited in support of this proposition, but it is respectfully submitted that not one of them supports the contention of counsel or has reference to any legislation like that which we have under consideration.

We understand the exact point of counsel to be that provision 29 of the street railway act, which in terms says that all existing street railway companies shall be subject to the provisions of that act, is not within the title of the street rail-

way act. That title is as follows: "An act to provide for the formation of street railway companies." It is presumed that counsel will not dispute the proposition and, in fact, we understand is willing to concede that fairly included within the purposes named, to wit, "the formation of street railway companies," would be all such provisions as have reference to the corporate powers, rights, privileges, and franchises of street railway companies, but he limits the scope of the language to the granting of those powers, rights, privileges, and franchises to street railway companies who receive their corporate existence subsequent to the enactment, and subject to the provisions of this particular act.

We submit that it is quite clear that such a narrow view of the title of this act is not justified by the well-settled rule as to the meaning of this constitutional provision. The rule, as we understand it to be, is stated by Mr. Justice Cooley, in his work on Constitutional Limitations: "There has been a general disposition to construe the provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted. The general rule is that there is no objection to it so long as it is not made to cover legislation incongruous in its character or which by no fair intendment can be considered as having a necessary or *proper* connection" (pages 172–174).

This statement of the law by Judge Cooley is substantially quoted from a decision rendered by him in People *vs.* State Insurance Co., 19 Mich., 392, where an act to provide for the incorporation of insurance companies contained a provision that all existing companies, foreign or domestic, should be subject to certain supervisory and visitorial powers and which was attacked upon the ground that it was not fairly within the title of an act entitled providing for the organization of insurance companies.

What is meant by a formation of street railway companies? Unquestionably it must not be limited to such provisions as simply refer to the steps to be taken to form the company, but must be said on the strictest construction to include within its scope and meaning all those statutory regulations and provisions by which the powers, privileges, and immunities of the corporations so formed are declared and protected. And in common understanding the provisions of an act declaring what the powers

and regulations, privileges, and franchises of a corporation shall be are as essential, in the ultimate and complete formation of the corporation, as are the provisions of the statute which authorize and point out the manner of obtaining the franchise of being a corporation. In other words, the formation of a corporation is not, according to the ordinary understanding, the mere filing of articles of agreement, but the formation of the corporation is made up of the articles of agreement and the provisions of the law creating and defining the powers, functions, rights, privileges, and franchises of the corporations so created; and so we say that when the act in terms expressly says that the powers, rights, protections, and privileges conferred upon companies formed under the street railway act shall become the charter powers, rights, protections, and privileges of existing street railway companies, it is completing the formation of the existing street railway companies by so doing. This is well illustrated by well-known legislative practice, by which general laws providing for the formation or incorporation of companies are from time to time amended.

Would it not require a good deal of hardihood to say that such amendments do not pertain to the formation of the corporation? If the provisions in question undertook to confer the powers, rights, protection, and privileges of the street railway act upon corporations other than street railway corporations, there might be some force to the objection, because such legislation would be incongruous and not germane; but when we consider that the last amendment to an act of incorporation pertains to the functions, powers, rights, and privileges of a corporation as much as the original provisions of the act did, we are forced to the conclusion that the legislature, in the enactment of section 29, was in fact attempting to complete, upon a general plan, the formation of existing street railway companies so that all companies engaged in that business should have the same powers, rights, protection, and privileges.

The formation of a corporation may be, and most likely is, the result of many and repeated legislative steps by which from time to time its charter and its functions, powers, rights, and privileges have been added to or decreased, curtailed, modified, or abolished; yet the last legislative step or act would be just as "formative" as the very first enactment.

Now, bearing this in mind, how can it be claimed that in

"An act to provide for the *formation* of street railway companies" the legislature cannot enact general provisions for the purpose of bringing existing corporations, already formed for the same purpose, within its regulations. Those provisions are steps *in the formation* of those existing companies as the legislature desired they should thereafter exist.

To illustrate: Suppose, in drafting the street railway act, the legislature had, as the first section thereof, said:

> "All street railway companies in this State, whether heretofore or hereafter organized, shall be subject to the provisions of this act, and shall have all the powers, rights, protection and privileges hereby declared,"

and followed it with the act as we find it, could it be claimed that the act was not one for the formation of charters of existing companies as the legislature desired they should stand from that time forward? We submit not. We are not here discussing or considering what the effect of such legislation would be in repeal or alteration of the former charters.

One of the weaknesses in the position of appellant's counsel is in assuming that all the provisions of an act to provide for the formation of a class of corporations must be confined to those created by that act, and cannot be extended to others of the same class, organized for precisely the same purposes under an earlier act.

Such has not been the view of the bench or bar in Michigan.

We have a notable example of this very method of legislation in the statute of Michigan providing for the incorporation of railroads.

In 1871 the legislature passed an act to revise the laws providing for the incorporation of railroad companies, and to regulate the running and management, and fixing the duties and liabilities of railroad and other corporations owning or operating any railroad within the State. Nothing was said in the title about the repeal of existing acts of incorporation, or the re-incorporation of existing companies thereunder, or the extension of the provisions of the act to existing corporations. The law made sweeping radical changes in the provisions for the regulation and operation

of railroads, and also in the method of incorporation, and the powers, rights, privileges, and liabilities of railroad companies under their charter; nevertheless, section 13 of the new act repealed in express language all of the prior acts for the formation of railroad companies, and enacted the following provision:

> "The organization of all corporations under the provisions of either of said (repealed) acts shall be deemed and taken to be organizations under this act, and all rights, obligations and liabilities contracted or incurred by any such corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act shall continue with the same force and effect as though such acts or law had not been repealed, and all such companies from and after the taking effect of this act shall be subject to all of the provisions herein as fully as though such organization had been perfected hereunder."

It is a matter of common knowledge that many of the most important railroad companies in Michigan, and now operating lines therein, were incorporated under the repealed acts, and are exercising their functions as corporations by virtue of the clause last above quoted and according to the provisions of the act of 1871. If the provision in the street railway act is invalid, then this railroad provision is more clearly so. It will be noted there is no requirement that the existing companies shall voluntarily reincorporate, but by express language all existing corporations are swept within the provisions of the new act and the new charter thrust upon them, so to speak, by direct legislation.

Substantially the same provision is found in the laws with reference to manufacturing corporations in Michigan.

We will examine some of the decisions cited by appellant's counsel as sustaining his contention that section 29 is invalid.

Isle Royale Corporation *vs.* Osmun, 76 Mich., 162, is cited, but, as we understand this decision, it sustains the validity of the legislation attacked.

In that case the supreme court had under consideration the provisions of an act entitled

> "An act to revise the laws providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, mineral, coal and other ores and minerals, and to fix the duties and liabilities of such corporations."

The act contained the following section:

> "Foreign corporations organized for the purposes authorized by this act, upon filing copies of their charter or articles of incorporation as provided in section 5, may carry on business in this State, and shall enjoy all the rights and privileges and be subject to all the restrictions and liabilities of corporations existing under this act."

The company, an English corporation, sought to avail itself of the benefit of this provision, but the Secretary of State refused to accept and file the copy of the charter and the articles of incorporation. It appeared from the charter and articles of incorporation of the English corporation that mining was but one of the purposes for which it was incorporated, and apparently an insignificant feature of the organization. Among other things, it was a land corporation, and its purposes included every incident of a proprietary, colonial occupation, including expressly the development of mineral, agricultural, grazing, and other resources: stock-breeding, farming, buying and selling live and dead stock, making all manner of urban and rural ways and improvements on land and water, with power within itself to organize other corporations for the purposes named, for investing in stocks and foreign, State, and Government securities, and dealing in negotiable paper; with power to buy up other enterprises, and to enter into joint arrangements, and many other matters. On the refusal of the Secretary of State to file the articles under the section quoted, it was sought by mandamus to compel him to file them. The mandamus was denied, two of the judges holding that *if* it was intended by the section quoted to confer powers *upon* FOREIGN *corporations as such*, it was not within the title or general purposes of the statute or of the constitutional provision; and also that section 23 was not designed to reach cases where the powers and purposes of the foreign corporation were differ-

ent from bodies incorporated under the statute itself. There is no intimation in the opinion of the two judges that as to a domestic corporation formed for the same purpose such provision would be invalid. Their opinion proceeds wholly upon the theory that such legislation inserted in the act as would have for its purpose the admission of a *foreign* corporation of a different character and for different purposes into the State, and giving to such foreign corporation the benefit of the provisions of the act, would not be within the scope of the title, but that the English corporation which had applied for admission was not within the purview of the provision, as it was not a corporation organized for the same purposes as those authorized by the act. Two of the judges concurred in all of the views presented in the opinion quoted from. Two of the judges dissented wholly from the view of Justice Campbell holding that under the provision in question the English corporation was entitled to be admitted, and that even under the broad construction attempted to be given the section it was valid. The fifth judge wrote a short opinion, in which he treats the provision as valid, but concurs in denying the application for the mandamus upon the ground that the English company did not come within the provisions of the section, stating:

> "The question presented in this application is whether we will compel the Secretary of State to file and record the articles of incorporation of relator. This we ought not to do, unless we are satisfied that under the existing laws relator is entitled to have them filed and recorded.
>
> "The statute contemplates that foreign corporations may file and record their articles of incorporation, and thereby be permitted to carry on the business for which they are incorporated; but the statute does not contemplate that foreign corporations may be empowered to carry on business not authorized by the laws of this State to domestic corporations, and for this reason I concur in denying the application."

It will thus be seen, first, that the opinion of Mr. Justice Campbell, concurred in by Justice Sherwood, does not hold the provision invalid, as not one within the scope of the title, unless it was intended to confer powers of a wholly

different character upon foreign corporations, but concludes by denying the application in the following language:

> "But this company, as a corporation, is organized under foreign laws for the multifarious purposes named in its articles, and cannot obtain any legal standing by filing its papers under section 23 of the mining law for the formation of corporations in this State without a subversion of settled principles."

In none of the opinions is it intimated that a provision similar to the one quoted, and referring to Michigan corporations already formed for the same identical purposes as those to be formed under the act, would be invalid. On the contrary, the result of Judge Campbell's opinion is simply that if the provision was intended to apply to corporations such as the English one it was not within the purview of the title, or if it was designed to create a distinct class of corporations for different purposes, it was not within the title. The opinions of the majority of the court are distinctly in favor of its validity, one of the judges limiting its application, however, to corporations carrying on a business like those authorized by the act, two of the judges holding that it was valid and applicable to the English corporation. This decision, instead of supporting the contention of appellant's counsel, distinctly supports our view.

The case of Mok *vs.* The Detroit Building & Savings Association, 30 Mich., presents a different question from the one here. There it was sought to organize corporations for building and leasing houses and tenements under the provisions of an act to authorize the formation of corporations for mining and smelting purposes. The gist of the decision in that case was simply that you could not, by reference to a general law for the formation of corporations of one class, provide for the formation thereunder of corporations of a wholly different class and for wholly different purposes, upon the ground that the new class of corporations did not come within the title of the act to which they must look for a statement of their coporate powers.

Skinner *vs.* Wilhelm, 63 Mich., 568, relates to the validity of an act of the legislature which had two distinct and separate objects in its title, one of which was to provide for the incorporation of Merchants' Mutual Insurance Com-

panies; the other of regulating the business of insurance by Merchants' and Manufacturers' Mutual Insurance Companies, and applied as well to merchants and manufacturers mutual insurance companies of a domestic character as to those of a foreign character.

We submit that the true rule on this subject is stated in the City of St. Paul *vs.* Lamprecht, 88 Fed. Rep., 449, decided by the court of appeals, and reported in the 31st C. C. A. Speaking of this constitutional provision, that court says:

> "It was not adopted to prevent the legislature from inserting in an act any provision which is germane to the general subject to which the act relates, but to prevent surreptitious legislation and the union in the same act of incongruous matters which have no relation to each other or to the general subject with which an act deals. (Citing cases.) This provision of the constitution ought not to receive a narrow or technical construction which will embarrass legislation by making laws unnecessarily restricted in their scope and operation, but like all provisions of the law, it should be fairly and liberally interpreted and enforced so that it will serve to prevent the abuses at which it was aimed without placing unnecessary restraints upon legislative action."

The rule is stated by the same court in Tabor *vs.* Commercial Bank, 63 Fed. Rep., 387, as follows:

> "Were the subject of the law as clearly stated in the title, the law will not be held obnoxious to this clause of the constitution on account of the presence in it of any provisions that are germane to the subject expressed in the title, or that would be naturally suggested by it as necessary or proper to a complete accomplishment of the purpose disclosed."

It should also be stated that this is the first time that any question has been raised as to the validity of this section, though it was directly applied in a former case between the parties in this case.

Citizens' St. R'y Co. *et al.* *vs.* City of Detroit, *supra*.

The court of appeals quoted the section as showing that the street railway act did apply to train railways and to city grants of easements to train railway companies made after 1867.

It is submitted that the decree of the lower court should be affirmed.

M. Brennan and
John C. Donnelly,
Counsel for Appellee.

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Clerk.

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Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 152.

THE CITY OF DETROIT, WILLIAM C. MAYBURY, MAYOR, AND CHARLES FLOWERS, CORPORATION COUNSEL, APPELLANTS,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

PROCEEDINGS IN PASSAGE OF STREET RAILWAY COMPANY ACT.

Bill to amend section 34 of an act entitled "An act to amend an act to provide for the construction of train railways, &c."

Introduced, read a first and second time, and referred to Committee on Incorporations (Mich. Sen. Jour., 1867, vol. 1, pp. 106, 107).

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adoption of substitute reported by committee. Bill placed on general order (Mich. Sen. Jour. 1867, vol. 1, p. 217).

Bill amended and placed on third reading (Mich. Sen. Jour. 1867, vol. 1, p. 556).

Passed (Mich. Sen. Jour. 1867, vol. 1, p. 574).

Returned from the house (Mich. Sen. Jour. 1867, vol. 1, p. 867).

Reported enrolled (Mich. Sen. Jour. 1867, vol. 1, p. 947).

Notice of approval (Mich. Sen. Jour. 1867, vol. 1, p. 976).

Proceedings in Passage of Amendment to Section 34, Train Railway Act.

Introduced and referred (Mich. House Jour. 1867, vol. 1, p. 184).

Reported and referred to committee of the whole (Mich. House Jour. 1867, vol. 1, p. 346).

Reported and ordered to third reading (Mich. House Jour. 1867, vol. 1, pp. 671, 672).

Passed (Mich. House Jour. 1867, vol. 1, p. 758).

Returned from senate, amended as finally passed (Mich. House Jour. 1867, vol. 3, p. 2475).

Reported enrolled (Mich. House Jour. 1867, vol. 3, p. 2546).

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No. 152.

Brf. of Duffield, Brennan & Donnelly for Appellees.

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Supreme Court of the United States

THE CITY OF DETROIT, *et al.*
Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

October Term, 1901.
No. 152.

Filed Nov. 13, 1901.

BRIEF FOR APPELLEES ON QUESTION OF EQUITABLE JURISDICTION.

HENRY M. DUFFIELD,
Counsel for Appellees.

MICHAEL BRENNAN,
JOHN C. DONNELLY,
Of Counsel.

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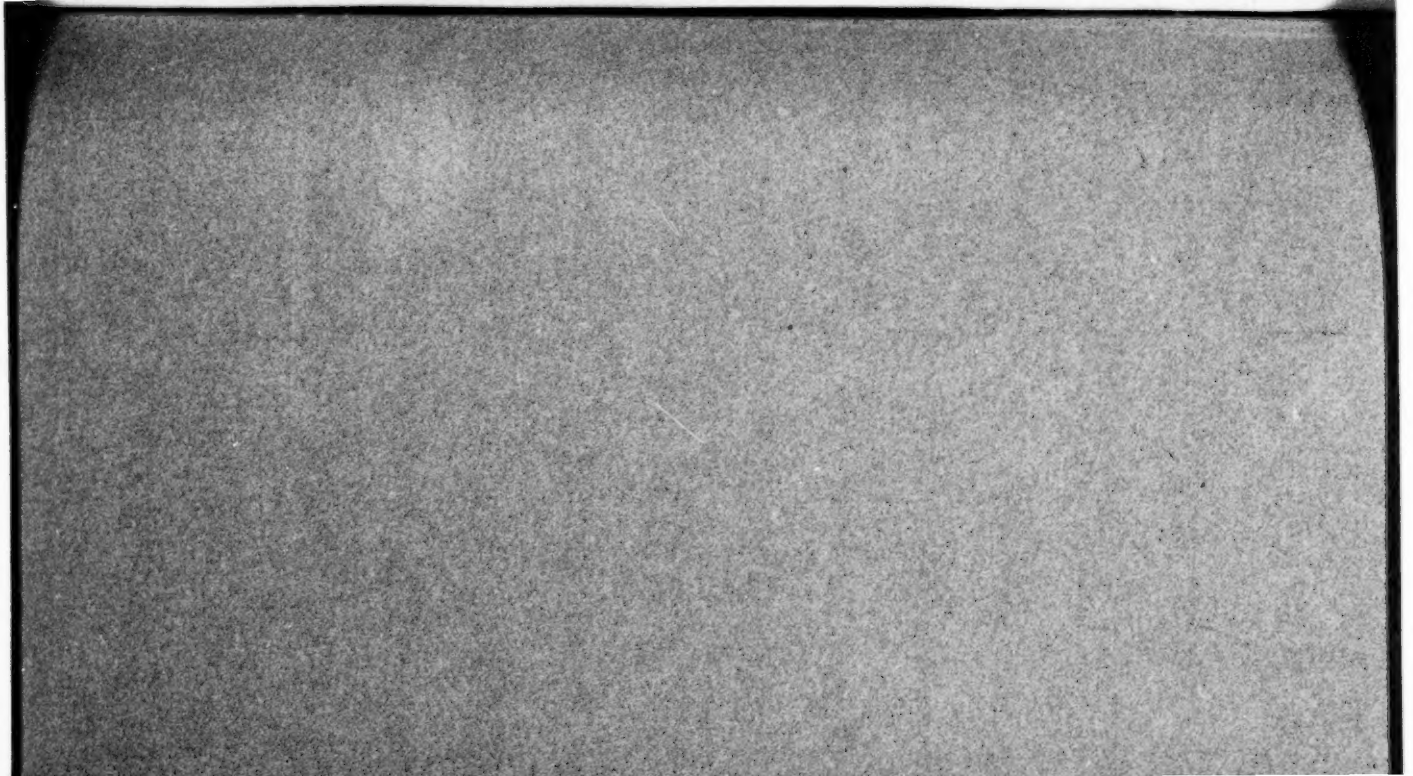

Supreme Court of the United States

THE CITY OF DETROIT, *et al.*
Appellants,
vs.
THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

October Term, 1901.
No. 152.

BRIEF FOR APPELLEES ON QUESTION OF EQUITABLE JURISDICTION.

The theory of complainant's bill is: that it has a contract with the City of Detroit to charge five cents for a single fare on any of its routes; that the ordinances prescribing the sale of eight tickets for twenty-five cents, abrogate and impair this contract and are therefore invalid and void.

The bill alleges:

"Your orator further shows unto the Court that as owner and lessee it is now engaged in the operation of upwards of one hundred and thirty-five miles of street railways in the streets of the City of Detroit; that in such operation it has in use upwards of four hundred street cars, which are propelled by electricity, and has in its employ, engaged in such operation, upwards of one thousand men as motormen and conductors; that it carries an average of ..... thousand passengers per day over the lines owned and operated by it; that under and by virtue of the provisions of said ordinances, Exhibits 'A,' 'B,' 'C,' 'D' and 'E,' and the obligation of your orator to carry such passengers as may offer themselves for carriage, it will be subjected to innumerable demands upon the part of the traveling public to sell to such persons as may make such demands tickets in accordance with the provisions of said ordinances, Exhibits 'A,' 'B,' 'C,' 'D' and

'E," and to issue, as provided and required thereby, and to accept and carry such passengers and transfer the same at the rates of fare fixed by said ordinances; that on your orator's refusal to comply with such demands and requests your orator may be subjected to numerous actions at law by persons so refused, and to annoyance, litigation and loss by reason thereof. That the said City of Detroit will seek, and now seeks, and threatens and intends by such power and authority as it may possess, and by vexatious legal proceedings, to compel your orator to comply with the provisions of said ordinances, Exhibits 'A,' 'B,' 'C,' 'D' and 'E,' and as a result your orator will be put to great loss, damage, hindrance and annoyance in transaction of its business, which it is entitled to carry on without such suits, litigation, actions, annoyance, hindrance, loss and damage."

Record, p. 14.

The allegations in this paragraph are admitted by the answer. (Record, p. 112.)

In paragraph twenty the bill alleges that large amounts of its bonds fall due within the next three years (after 1899), to retire which it will be necessary for complainant to borrow on bonds of like character large sums of money secured by mortgage on complainant's property and franchises and easements.

Record, p. 15.

The bill is a Bill of Peace and the allegations above stated make a case of equitable jurisdiction.

In Western Union Telegraph Company vs. Norman Auditor, 77 Fed., 13, 21, a bill to restrain the State Auditor of Kentucky from certifying to sixty-eight county clerks their respective proportions of the taxes which the bill prayed to have declared void, was sustained on the ground of the multiplicity of suits which would follow such certification.

None of the county clerks were made defendants.

In Smith vs. Bivens, 56 Fed., 352-356:

A bill to have declared void an act of the Legislature of South Carolina exempting courts' property from the provisions of the general law requiring all owners of stock and cattle to keep them fenced in, was sustained on the ground that by the operation of the act the court was

exposed constantly to trespasses upon the land and "were he limited to relief at law he would be involved constantly in a multiplicity of suits and harassed by endless and unsatisfactory litigation."

So in the case at bar the Street Railway Company will be exposed to numberless attempts of persons to ride on their cars on tendering twenty-five cents for eight tickets and claims of extra transfers—which would be in the nature of trespasses in which no adequate remedy at law exists, many of which would result in strife upon the cars and suits against the company for damages. It is apparent that such attempts would seriously affect the operation of the street railway not only in respect to such trespassers, but in the altercation and strife between them and conductors would affect its business with alien and unlawful passengers. A dispute between the Street Railway and its employes in the City of Detroit evoked a serious and dangerous riot which stopped the moving of all cars in the city. This constitutes an irreparable injury within the decisions.

In Parker vs. Woolen Co., 2 Black, 551:

"It (equity) will also give its aid to prevent oppression and interminable litigation or a multitude of suits or where the injury is of such a nature that it cannot be adequately compensated by damages at law, or is such as from its continuance or permament nature must occasion a constantly recurring grievance which cannot be prevented otherwise than by an injunction" (citing cases). It is said

In Wahle vs. Reinbach, 76 Ills., 322, "irreparable injury" is not such as is beyond the possibility of repair or beyond possible compensation in damages, nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other and because it is so large on the one hand or so small on the other is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law."

In Nashville C. & St. L. Ry. Co. vs. McConnell, 82 Fed., 65:

A bill was sustained to prevent the use of Nashville exposition tickets by persons other than the original purchasers. The defendants were ticket brokers or "scalpers" who had no contract relations whatever with the railroad company. The court held that one who wrongfully interferes in a contract between others is liable to

the party injured thereby and his continued interference may be ground for injunction—and said:

It is not necessary, after having stated the facts at length, to say that it is perfectly apparent that practically these complainants are without any adequate redress for violation of these ticket contracts, and that for damages which they may sustain, if there is no remedy in equity, there is none whatever, in any just sense. Indeed, I do not understand the eminent counsel for the defendants to contend that the multitude of suits at law, in any form in which they might be technically maintained, would bring any substantial result to the complainants. On the contrary, it is perfectly apparent that it would only involve the companies in further loss, in the outlay necessary to meet large bills of cost against insolvent persons, to say nothing of other difficulties which are obvious enough (p. 69).

The case simply calls for an application of the injunctive process to prevent complainant's business from fraud and obstruction, and a business is just as much the subject of suit, with a right to protection, as ordinary forms of tangible real and personal property. Whatever doubt may have been expressed at any time, the cases are now agreed upon this proposition. It needs no extended statement to make it manifest that the right to carry on a business without interference, without fraud, and without obstruction, is one of the most valuable of all rights. Indeed, in the commercial world the right of greatest value is the right to freely carry on a lawful business without unlawful interruption. It is a substantial right, which may be protected by any remedy known to the court as fully as a constitutional or statutory right, and as fully as a right in the ordinary forms of property. In Scott vs. Donald, 165 U. S., 108, 17 Sup. Ct., 262, already referred to, it was held by the Supreme Court of the United States that the constitutional right of the complainant to import for his use, from time to time, ale, wines, and liquors, the products of other states, might be protected by injunction from repeated invasion by seizure of goods under color of an unconstitutional statute of the State of South Carolina. The ruling was based on the ground of avoiding a multiplicity of suits, and the want of adequate remedy at law.

In Dinsmore vs. Southern Express Co., 92 Fed., 764:

A bill, by its stockholders, was sustained against the Express Co., the Railroad Commission of Georgia and its

members and the Attorney General of the State to enjoin the express company from paying the war stamp tax receipts and the Railroad Commission and Attorney General from enforcing the penalties of the state statute against the express company for such failure to pay.

This case would be directly in point if the Street Railway Company had refused to file the bill and the stockholders had filed the bill and prayed that the company be enjoined from selling tickets and giving transfers under the ordinances and the city, its mayor and counsel be enjoined from enforcing the ordinances, for the jurisdiction of the court was not put upon the sole ground of compelling the directors of the company to execute their trust and protect the stockholders from injury.

The case at bar is in many, and, we think, in all material respects, within the decision of this court in

Smyth vs. Ames, 169 U. S., 466, 517,

which was a bill filed to enjoin the enforcement of rates prescribed by a commission—and it was held within the equitable jurisdiction of the court. While in that case penalties were imposed, the decision was not put solely on that ground. The Court say (pp. 517, 518):

"The transactions along the line of any one of these railroads, out of which causes of action might arise under the statute, are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills, would avoid multiplicity of suits, and give a remedy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged for transportation. The transactions for a single week would expose any company questioning the validity of the statute to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency and determine, once for all and without a multiplicity of suits, matters that effect not simply individuals, but the interests of the entire community as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained."

It will be observed that in neither of these two last cases were any of the persons who were to use the tickets

or to get the benefit of the reduced rates of transportation parties to the suit. The decisions proceed on the ground that the *company's business* is affected injuriously and the right to sue at law for each specific injury is not sufficiently comphehensive and is not adequate.

II.

The court is not compelled to consider this question. It is waived by failure to raise it in the answer or on the proofs.

Reynes vs. Dumont, 22 C. C. A., 248.
Kilbourn vs. Sunderland, 130 U. S., 354; 130 U. S., 505.

Moreover, the defendant expressly waived in open court, and in the interest of the public and the peace and good order of the city both parties desire the main question settled.

HENRY M. DUFFIELD,
Counsel for Appellees.

MICHAEL BRENNAN,
JOHN C. DONNELLY,
Of Counsel.

Office Supreme Court
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NOV 4 1901
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 152.

THE CITY OF DETROIT, WILLIAM C. MAYBURY, MAYOR, AND CHARLES FLOWERS, CORPORATION COUNSEL, APPELLANTS,

vs.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY.

PROCEEDINGS IN PASSAGE OF STREET RAILWAY COMPANY ACT.

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adoption of substitute reported by committee. Bill placed on general order (Mich. Sen. Jour. 1867, vol. 1, p. 217).

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Notice of approval (Mich. Sen. Jour. 1867, vol. 1, p. 976).

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Reported enrolled (Mich. House Jour. 1867, vol. 3, p. 2546).

Notice of approval (Mich. House Jour. 1867, vol. 3, p. 2565).

Supreme Court of the United States.

No. 152.—October Term, 1901.

The City of Detroit, William C. Maybury, Mayor, and Charles Flowers, Corporation Counsel, Appellants, *vs.* The Detroit Citizens' Street Railway Company.	Appeal from the Circuit Court of the United States for the Eastern District of Michigan.

[March 3, 1902.]

The bill in this suit was filed by the railway company for the purpose of obtaining an injunction to restrain the city of Detroit and the individual defendants from enforcing certain ordinances of the common council of the city, adopted in 1899, reducing the rates of fare on the various city railways of the complainant and providing for transfers of passengers from one route to another on payment of one fare of five cents, on the ground that such ordinances were violations of the Federal Constitution, because they impaired the obligation of contracts theretofore entered into between the city and the various predecessors of the complainant. The Circuit Court granted a decree perpetually enjoining the defendants as prayed for, and they have appealed therefrom to this court.

As further ground for equitable jurisdiction, the complainant, after setting up in the bill its alleged contracts with the city, and the attempted violation thereof by the latter, made the following averments:

"Your orator further shows unto the court that as owner and lessee it is now engaged in the operation of upwards of one hundred and thirty-five miles of street railways in the streets of the city of Detroit; that in such operation it has in use upwards of four hundred street cars, which are propelled by electricity, and has in its employ, engaged in such operation, upwards of one thousand men as motormen and conductors; that it carries an average of ——— thousand passengers per day over the lines owned and operated by it; that under and by virtue of the provisions of said ordinances, Exhibits A, B, C, D and E, and the obligation of your orator to carry such passengers as may offer themselves for carriage, it will be subjected to innumerable demands upon the part of the travelling public to sell to such persons as may make such demands tickets in accordance with the provisions of said ordinances, Exhibits A, B, C, D and E, and to issue as provided and required thereby, and to accept and carry such passengers and transfer the same at the rates of fare fixed by said ordinances; that on your orator's refusal to comply with such demands and requests your orator may be subjected to numerous actions at law by persons so refused, and to annoyance, litigation and loss by reason thereof;

that the said city of Detroit will seek and now seeks and threatens and intends by such power and authority as it may possess and by vexatious legal proceedings to compel your orator to comply with the provisions of said ordinances, Exhibits A, B, C, D and E, and as a result your orator will be put to great loss, damage, hindrance and annoyance in the transaction of its business, which it is entitled to carry on without such suits, litigation, actions, annoyance, hindrance, loss and damage.

"That, in full reliance upon its right to charge the full rates of fare fixed by the various contracts and grants hereinbefore referred to, and for the purpose of procuring such money as it was necessary that it should have for the construction, maintenance, repairing, and reconstruction and operation of the various lines of railway hereinbefore described, it issued its bonds and borrowed thereon the money so needed; that your orator and its predecessors and lessors have issued for the purposes aforesaid bonds amounting in the aggregate to eight million two hundred thousand dollars, payable in gold coin, with semi-annual interest at the rate of five per cent per annum; that many of said bonds mature and will be due and payable within the next three years, and it will be necessary for your orator to borrow a considerable amount of money to assist in the payment and retirement of said bonds, by the issue of bonds of the same character; that all of said bonds outstanding are secured by mortgages given at various dates, by the terms of which all of the property, rights, privileges and franchises of your orator, its lessors and predecessors, including the franchises or rights fixed by the said various contracts and grants to charge the rates of fare therein named, together with all the tolls, fares, issues, earnings and profits arising therefrom, have been mortgaged to trustees therein named for the use and benefit and security of the holders of such bonds; that said bonds have been sold to parties purchasing the same in the full faith and belief that your orator, its lessors and predecessors and grantors, had the right to charge the full rates of fare fixed by the various contracts and grants without any right upon the part of the said city of Detroit, or of any other person, corporation, or authority to interfere with, lessen, reduce or impair the same, and, the said right to have and receive the rates of fare so fixed being so mortgaged as a part of the security for the payment of said bonded indebtedness, the action of said city by the adoption of the ordinances, Exhibits A and B, is an impairment of the obligation of said contract as against the rights of said bondholders under and by virtue of the security created by said various mortgages and in contravention of said section 10 of article 1 of the Constitution of the United States."

Complainant also averred in its bill the granting of consent by the city to its predecessors to lay tracks in the streets and charge tolls at the rates named in certain ordinances, for transporting passengers, and the due assignments by the various companies of all such rights, by purchase or lease to the complainant, and the defendant by its answer makes no issue as to the validity of such assignments or the ownership by complainant of all the interests of the former companies in the contracts and ordinances set forth in the bill.

The answer admits the passage by the common council of the ordinances of 1899, reducing the rates of fare on the roads operated by the complainant,

and also admits that the city intends to compel the complainant to comply with the provisions of such ordinances, which the defendants aver are valid because, as they claim, the former ordinances did not constitute a contract as to rates of fare which could not be altered by the city.

This litigation arises out of the different constructions placed by the parties upon the statutes of Michigan, called respectively the Tram-railway Act and the Street-railway Act, and the various amendments of those acts, and also out of the different claims of the parties as to the character and validity of the ordinances passed by the common council subsequently to the passage of those statutes.

The Tram-railway Act was passed in 1855, and the Street-railway Act in 1867. Prior to the amendment in 1861, made to the former act, there was no authority for the incorporation of street railways, and in the year named that act was amended by adding sections 33 and 34, which are as follows:

"SEC. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State.

"SEC. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them: Provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

In 1867 the above section 34 was further amended by adding an additional proviso, as follows:

"Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the streets in such consent and grant named pursuant to the terms thereof."

These sections of the Tram-railway Act, it will be seen, made no special provisions as to rates of fare, and there were no other sections of the act which did. The last amendment, above set out, of section 34 was passed March 27, 1867, or twenty-two days after the passage of the original Street-railway Act, March 5, 1867.

The provisions of the Street-railway Act material in this controversy are as follows:

"SEC. 13. Any street railway corporation organized under the provisions of this act may with the consent of the corporate authorities of any city or village given in and by an ordinance or ordinances duly enacted for that purpose and under such rules, regulations and conditions as in and by

such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways in said city or village as shall be designated and granted from time to time for that purpose in the ordinance or ordinances granting such consent, but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof shall be recorded by the township clerk in the records of his township. . . .

"SEC. 14. After any city, village or township shall have consented as in this act provided to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred.

"SEC. 15. Any street railway company may also purchase and acquire at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township owned by any other corporation or company, together with the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights, privileges and franchises of such company and upon the same terms as the company whose road and franchises were so acquired might have done. Every railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage whenever the corporation may deem it expedient so to do."

"SEC. 20. The rates of toll or fare which any street railway may charge for the transportation of persons or passengers over their road shall be established by agreement between said company and the corporate authorities of the city or village where the road is located, and shall not be increased without the consent of such authorities.

"SEC. 29. All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force shall have the same powers, rights, protection and privileges and shall be subject to all of the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

Section 30 in substance provides that all companies and corporations thereafter formed for street railway purposes must be organized under this act.

Some of the railroads of which the complainant is the owner or lessee were organized under the Tram-railway Act and some were organized

under the Street-railway Act of 1867. The Detroit Street Railway Company, now owned by the complainant, was organized under the Tram-railway Act, and the city adopted an ordinance assenting to the laying of tracks through the designated streets of the city on November 24, 1862. Section 1 of the ordinance provides:

"SEC. 1. That consent, permission and authority is hereby given, granted and duly vested in Eben N. Wilcox and his associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and described, and in the manner and upon the condition set forth in this ordinance."

The following sections then provide for the streets in which the rails are to be laid, the manner of laying, whether double or single track, and various other matters not essential to enumerate.

Section 8 reads as follows: "The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section."

Section 20 limits the powers and privileges conferred by the ordinance to thirty years from and after the date of its passage.

On November 14, 1879, an ordinance was passed supplementary to the one passed on November 24, 1862, which provided for extensions by the railway company of its tracks through various other streets of the city, and also provided, among other things, for a special tax on the gross receipts of the several lines of railway operated by the company, payable to the city, which tax was to be in lieu of license or other taxes and charges under the existing ordinances.

Section 5 of the supplemental ordinance provided that the powers and privileges conferred and the obligations imposed on the railway company, by the ordinance passed November 24, 1862, and the amendments thereto, should be thereby extended and limited to thirty years from date, (November 14, 1879.)

Section 6 provided that the ordinance should take immediate effect when written acceptances of the terms thereof were filed in the office of the city clerk of Detroit by the different companies controlled by the Detroit City Company; and it also provided that all ordinances or parts of ordinances in conflict with the provisions thereof were thereby repealed; and all ordi-

nances and parts of ordinances not in conflict therewith were thereby affirmed and continued in force. The acceptances were subsequently duly filed in the city clerk's office.

A similar ordinance to that of November 14, 1879, was passed on June 30, 1880, relative to the Fort Wayne and Elmwood Street Railway Company, confirming and extending for thirty years its grant under the ordinance of January 31, 1865. Similar ordinances were passed in favor of other lines which had been organized under the Tram-railway Act and its amendments.

And ordinances of the same nature were passed relating to the companies organized under the Street-railway Act of 1867.

The original ordinance under which the city gave consent to the laying of the rails of the Grand River Street Railway was adopted on May 1, 1868, and the section providing for the rate of fare is the same in language as section 8, in the foregoing ordinance relative to the Detroit Street Railway.

The ordinance relating to the Dix Avenue Railway provided in section 6 "that the rate of fare for a single trip shall not exceed five cents for any distance within the city limits." Similar language was used in section 5 of the ordinance approved by the common council July 13, 1886, relating to the Highland Park Railway. The eighth section of the ordinance approved by the common council January 31, 1868, with regard to the Fort Wayne and Elmwood Railway Company, provides that "the rate of fare for any distance shall not exceed five cents in any car."

These ordinances embrace the various railroads now owned or leased and operated by the complaint, and it is in them, taken in connection with the statutes already referred to, that the complainant finds the contracts or agreements as to the rate of fare, the obligation of which agreements it avers is impaired by the later ordinances passed in 1899.

The charter of the city of Detroit, approved June 7, 1883, by sections 121 and 122, clothed the common council with power over the streets, highways and alleys, to establish, open, widen, extend, straighten, alter, vacate, &c., and generally to control and regulate the manner in which the highways and streets, avenues, lanes alleys, public grounds aud spaces within the city should be used and enjoyed.

The constitution of the State of Michigan, article 15, section 1, provides that—

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

The various ordinances which have been referred to contain certain reservations of the right to alter, &c., which are thus worded: Section 19 of the grant of November 24, 1862, to the Detroit City Railway is as follows:

"It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways."

Section 7 of the grant of November 14, 1879, re-enacting and extending the grant of Novembr 24, 1862, is as follows:

"The right to amend or repeal this ordinance in case of its violation by said company or companies is expressly reserved."

Section 3 of the grant of January 5, 1885, authorizing the Brush street line, is as follows:

"It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway."

Section 3 of the Trumbull avenue line grant of July 31, 1865, is a literal copy of the one last quoted.

Section 18 of the grant to the Grand River Street Railway of May 1, 1868, is as follows:

"It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, welfare or accommodation of the public in relation to said railways."

The same reservasion was contained in section 4 of the grant of June 27, 1885, of the Myrtle street route.

And section 3, of the grant of August 3, 1888, relating to the Grand River line, is the same.

Section 19, of the grant of January 31, 1865, to the Fort Wayne & Belle Isle Company is as follows:

"It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interest, safety, welfare or accommodation of the public in relation to said railways."

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

A question has arisen at the outset as to the jurisdiction of a court of equity over a case like the one now presented. Assuming the right to relief in some form, has the complainant a plain and adequate remedy at law, or is the case such in its nature and in the relief demanded as would be cognizable in a court of equity? The foundation of the right of action lies in the alleged invalidity of the ordinances of 1899, reducing the rates of fare on the railways of the complainant, because, as averred, those ordinances

are in violation of the Federal Constitution, as impairing the obligation of contracts between the parties already existing, and therefore the claim is made that they should not be permitted to be enforced against the complainant where such enforcement might result in a multiplicity of suits, or in harassing and expensive litigation.

The averments in the complainant's bill upon this subject, which are set forth in the above statement of facts, show the additional and special grounds upon which the jurisdiction in equity is invoked. Of course, if the complainant obey these ordinances, no controversy can arise, but if in good faith it believe them to be invalid and hence not binding upon it, and without resorting to the courts for equitable relief, it refuses to obey them, the consequences may be not only embarrassing but may lead to much unnecessary and expensive litigation. Continuous demands for the tickets mentioned in the ordinances at the reduced price therein provided for may be made by passengers while in the cars of complainant, and they may refuse to pay fare at the old rate, and may carry such refusal to the point of suffering removal from the cars on account of non-payment of fare. What amount of force would be necessary in the opinion of the various passengers to demonstrate that their going was not voluntary would of course give rise to disputes between them and the conductors, and would possibly, if not probably, lead to frequent breaches of the peace in the course of these attempts at removal. If not removed, then the passengers would either pay no fare or the complainant would have to accept the fare as provided in the ordinances of 1899, and that would be the same in fact as submitting to their enforcement.

The roads operated by complainant are also indebted to an extent of over eight million dollars, secured by mortgages upon the railways, their franchises, rights and privileges, together with the tolls and fares, earnings and profits arising therefrom, and some of this indebtedness is soon to mature, and it is admitted that the bonds issued as evidence of such indebtedness and secured by its mortgages were so issued and sold to and purchased by the holders thereof in the full faith and belief that the various roads represented by the complainant had the right to charge the rates of fare fixed by the ordinances already mentioned; such belief being based upon the existence and terms of such ordinances.

The ability of the complainant to renew or extend its mortgage indebtedness might depend upon belief in the validity of the contracts as to the rates of fare agreed upon before the attempted alteration thereof by the ordinances of 1899. The immediate enforcement of these later ordinances might result in such a decrease of income as to seriously imperil the solvency of the complainant. An equitable action like this would certainly be more adequate and offer more effective and immediate relief than for the complainant to await the various actions at law to which it would

otherwise be subjected by the defendants and the individuals demanding the reduced rates for transportation.

The mayor and corporation counsel have, as is seen, been joined with the city as defendants in the suit. The reason for the joining of the individual defendants would seem to be that they are the officers upon whom would devolve the execution of the ordinances passed by the common council, and in the answer of the defendants it is admitted that they intend to enforce obedience by the company to such ordinances. The case is similar in some of its aspects to that of *Smyth* v. *Ames*, (169 U. S. 466.) It is true there are no penalties fixed in the ordinances for disobedience to their commands on the part of the company, but the bill shows that there are a large number of passengers carried over the roads of the complainant daily, amounting to many thousands, each of whom would have the right to demand transportation at the rates provided for by the ordinances in case they were valid. As is said in *Smyth* v. *Ames*, (page 518.) "The transactions of a single week would expose any company questioning the validity of the statute to a vast number of suits by shippers, to say nothing of the heavy penalties named in the statute. Only a court of equity is competent to meet such an emergency and determine, once for all, and without a multiplicy of suits, matters that affect, not simply individuals, but the interests of the entire community as involved in the use of a public highway and in the administration of the affairs of the quasi-public corporation by which such highway is maintained." While this is not such an extreme case, and there are no penalties provided in the ordinances for disobedience, yet the same principle applies.

It is a matter of general public interest, as well as of vital importance to the complainant, that the question involved in this litigation should be determined at the earliest possible moment, and once for all, and thus a multiplicity of suits and other complications prevented.

Taking all these facts into consideration, and bearing in mind that the answer does not set up any defense of the lack of jurisdiction of a court of equity over the subject-matter, and does not insist that there is an adequate and plain remedy at law, (and no such objection has been taken at any time, and has not been insisted upon before us,) we do not feel compelled, under the peculiar circumstances of the case, to ourselves take notice of it.

It is not such a case as on its face equity could have no jurisdiction over, such as an action to recover damages for an assault, or for a libel or slander, but the question between the parties as to the validity of various ordinances and the right of the city to enforce them, involving, as they may, the credit and possibly the solvency of the complainant, and taking into consideration the public interests involved in a speedy and final

determination of the question, all these as well as other facts already mentioned, we think, make out a case for following the general rule, that a defense of this nature will not be recognized where it has not been taken by answer or in any other manner and is not insisted upon on the hearing before the court. (*Reynes* v. *Dumont*, 130 U. S. 354; *Kilbourn* v. *Sunderland*, Id. 505; *Brown* v. *Iron Co.*, 134 U. S. 530.)

We do not mean to assert that in all cases of this nature, involving simply the validity of a subsequent ordinance or law, a court of equity would be the proper forum, but confine our decision to the special facts of this case, including the fact that no objection has been taken to the jurisdiction of the court at any stage of the litigation, and is not now raised by any party to the same.

This brings us to a consideration of the questions argued at the bar.

In furtherance of the claim by defendants that the ordinances of 1899 reducing the rates of fare are valid, it is urged that express authority from the legislature is required to enable the common council of a city to pass ordinances such as those described in this case, providing for the consent of the city to the laying of tracks and the running and operation of a railroad through its streets and the fixing of rates of fare, and that no such power was granted in this case, and if there were, there has been no agreement made by the passage of the ordinances referred to in the statement of facts. It may be conceded that clear authority from the legislature is needed to enable the city to make a contract or agreement like the ordinances in question, including rates of fare. But there can be no question in this court as to the competency of a State legislature, unless prohibited by constitutional provisions, to authorize a municipal corporation to contract with a street railway company as to the rates of fare, and so to bind during the specified period any future common council from altering or in any way interfering with such contract. (*New Orleans Gas Company* v. *Louisiana Light Company*, 115 U. S. 650; *New Orleans Waterworks Company* v. *Rivers*, Id. 673; *St. Tammany Waterworks* v. *New Orleans Waterworks Company*, 120 Id. 64; *Walla Walla City* v. *Walla Walla Water Company*, 172 Id. 1, 9; *Los Angeles* v. *Los Angeles City Water Company*, 177 Id. 558, 570; *Freeport Water Company* v. *Freeport City*, 180 Id. 587, 593.) The contract once having been made, the power of the city over the subject, so far as altering the rates of fare or other matters properly involved in and being a part of the contract, is suspended for the period of the running of the contract.

It is, however, urged that the terms employed in the ordinances under which the complainant runs its different lines of street railways are not sufficient to constitute contracts, which may not be altered at the pleasure of the common council. It is said that at least in regard to the ordinances relating to those companies organized under the Tram-railway Act, no con-

tract can be found in them, as there was no special provision in that act for an agreement between the city and a company applying for the use of its streets, as to the rates of fare, and therefore a statement in an ordinance upon that subject would amount to no more than a license which might be altered or revoked at any time; and that if the language were a contract, it was in the power of the common council to alter or abrogate it under section 34 of the Tram-railway Act.

It will be seen that under section 34 of the Tram-railway Act, as it was enacted in 1861, a railway corporation organized under the act could not construct a railway through the streets of a city without the consent of the municipal authorities, "and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe." Hence, it is argued that any terms or conditions under which the railway company obtained the consent of the municipal authorities might by the same authorities be from time to time altered as they should in their discretion think fit.

In *Pingree* v. *Michigan Central Railroad Company*, (118 Mich. 314; also 76 N. W. Rep. 635,) decided in 1898, the Supreme Court of Michigan held that section 15 of the laws of 1846, relating to the incorporation of the Michigan Central Railroad Company and other sections mentioned in the act, which provided that the company might fix, regulate and receive tolls taken for the transportation of passengers or property on the railroad subject only to the limitation, as to passengers, of three cents per mile, &c., the company having the power to charge for tolls and transportation such sums as might be lawfully established by the by-laws of the company, and the board of directors having power to pass all by-laws necessary for carrying into execution all powers vested in the company, conferred a contract right on the corporation to fix tolls within the limits of three cents per mile, which right could not be violated by the acts of a succeeding legislature.

There is no provision in the act referred to in the above cited case, of a nature similar to the one in question here, providing for regulations, terms and conditions which might from time to time be prescribed. The case shows, however, that in the opinion of the Supreme Court of Michigan, language similar to that used in the ordinance, (omitting such provision,) amounted to a contract, and the question remaining would be whether the further language contained in the ordinance permitted an alteration of the terms of the contract as the common council might from time to time prescribe. The rate of fare is among the most material and important of the terms and conditions which might be imposed by the city in exchange for its consent to the laying of railroad tracks and the running of cars thereon through its streets. It would be a subject for grave consideration and conference between the parties, and when determined by mutual agreement, the rate would naturally be regarded as fixed until another rate was adopted by a like agreement. Can it be possible that under this

language permitting consent upon such terms and conditions as the city might from time to time prescribe, the power was reserved to make a rate of fare which might ruin the whole enterprise? That a rate once deliberately and mutually agreed upon might be thereafter and from time to time altered at the pleasure of the city alone? Will it be believed the parties thus understood the meaning of that provision? It would hardly be credible that capitalists about to invest money in what was then a somewhat uncertain venture, while procuring the consent of the city to lay its rails and operate its road through the streets in language which as to the rate of fare amounted to a contract, and gave the company a right to charge a rate then deemed essential for the financial success of the enterprise, would at the same time consent that such rate then agreed upon should be subject to change from time to time by the sole decision of the common council. It would rather seem that the language above used did not and was not intended to give the right to the common council to change at its pleasure from time to time those important and fundamental rights affecting the very existence and financial success of the company in the operation of its road, but that by the use of such language there was simply reserved to the city council the right from time to time to add to or alter those general regulations or rules for the proper, safe and efficient running of the cars, the character of service, the speed and number of cars and their hours of operation and matters of a like nature, such as are described in the opinion of the court below in this case. Such would seem to be a reasonable construction of the language. It is unnecessary to conclusively determine the question, because we think that under sections 20 and 29 of the Street-railway Act of 1867, above set out, and by the subsequent adoption of the ordinance of 1879, (set out in the foregoing statement of facts,) relating to the Detroit City Railway Company, (and by the adoption of similar ordinances thereafter with regard to the other companies,) binding agreements were made and entered into between the city on the one side and the companies on the other relating to rates of fare, and such agreements could not be altered without the consent of both sides.

These agreements had express legislative authority, not only under the Tram-railway Act, but also and particularly under the Street-railway Act of 1867. By the twentieth section of the latter act it was provided that the rates of toll or fare, which any street railway may charge for the transportation of persons or passengers over its road, should be established by agreement between the company and the corporate authorities of the city or village where the road is located, and should not be increased without the consent of such authorities. The provisions of this section, among others, were by the twenty-ninth section of the act transferred to "all companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then

in force, and shall have the same powers, rights of protection and privileges and shall be subject to all the liabilities as hereby provided for companies organized under the provisions of this act."

It is plain that the legislature regarded the fixing of the rate of fare over these street railways as a subject for agreement between the parties and not as an exercise of a governmental function of a legislative character by the city authorities under a delegated power from the legislature. It was made matter of agreement by the expressed command of the legislature. Ordinances of a like nature were passed by the common council relating to the other companies, and all of them were accepted in writing and they all had in them provisions relating to, or referred to ordinances providing for, the rate of fare in language similar to the foregoing.

Coming to a consideration of the effect of the language used, we think it amounted to a contract as to rates of fare. The ordinance of 1879 and the similar ordinances thereafter passed relating to the other corporations, together with the Street-railway Act of 1867, and sections 20 and 29 thereof, make out plain agreements entered into between the parties in relation, among other things, to the rates of fare to be charged by those companies. In the ordinance of 1879 and in the other ordinances under consideration, there were provisions made for special taxation of the companies which the Supreme Court of Michigan in *Detroit Citizens' Street Railway Company* v. *Common Council of the City of Detroit*, (125 Mich. 673,) has held amounted to a contract between the parties which was as binding as though made by the legislature itself. Such decision by the Supreme Court of Michigan is entitled to very great respect and weight. If the ordinance constituted a contract between the parties in relation to taxes which were to be levied upon the company, we do not see any reason, in the language used providing for the rates of fare, for not holding that there is a contract as to those rates equally binding with that in regard to taxes.

In *City Railway Company* v. *Citizens' Street Railroad Company*, (166 U. S. 557,) the common council of Indianapolis, on January 18, 1864, adopted an ordinance which said: "Consent, permission and authority are hereby given, granted to and duly vested in the company organized with R. B. Catherwood as president, a body politic and corporate by the name of the Citizens' Street Railway of Indianapolis, and their successors, to lay a single or double track for passenger railway lines," &c., under which ordinance the railway was built. This court said (page 567): "The original ordinance of January 18, 1864, was plainly a proposition on the part of the city to grant to the company the use of its streets for thirty years, in consideration that the company lay its tracks and operate a railway thereon upon certain conditions prescribed by the ordinance. This proposition, when accepted by the company and the road built and

operated as specified, became a contract which the State was not at liberty to impair during its continuance; but if, at the expiration of the thirty years, the road had been sold to another company, and that company had applied for and obtained from the common council a franchise to occupy its streets for another period, it seems to be clear that such a contract would need no other consideration to support it than the continued operation of the road under such conditions as the city chose to impose."

Although in that case there was no provision in the statute directing that the rates of fare should be established by agreement, yet nevertheless it was held that the language used amounted to an agreement upon the subject matter which could not be altered during its continuance by either party.

Upon this question considerable stress has been laid in the brief and in the arguments of counsel for the defendants upon the case of *Georgia Railroad & Banking Company* v. *Smith*, (128 U. S. 174.) The twelfth section of the charter to that company declared, among other things, that it should have the exclusive right of transportation or conveyance of persons, merchandise, &c., over the railroad to be constructed, and it provided that the charge of transportation or conveyance should not exceed fifty cents per one hundred pounds for heavy articles, and ten cents per cubic foot on articles of measurement for every one hundred miles, and five cents per mile for every passenger. Permission was granted the company to rent or farm out any part of their exclusive right of transportation to any individual on such terms as might be agreed upon. Pursuant to that authority the company leased to one Wadley for the term of ninety-nine years such privileges. Afterwards the legislature of Georgia created a board of railroad commissioners, (Laws of Ga. 1879, p. 125,) and gave the board power to prevent railroad companies from charging other than just and reasonable rates. That board prescribed rates for the transportation of freight and passengers by railroad companies in the State which were less than the maximum rates authorized by the twelfth section of the charter of the company above referred to. The question of the validity of this order of the board of commissioners was brought before this court, and it was held that the language of the charter did not justify the holding that, notwithstanding any altered conditions of the country in the future, the legislature had, in 1833, at the time of the grant of the charter, contracted that the company might for all time charge rates for the transportation of persons or property over its line up to the limits there designated. The reasons for so holding are stated by Mr. Justice Field at pages 180 and 181 of the report, and it was not thought that in the exercise of the merely governmental function of creating a charter and incorporating the banking and railway company the legislature had in regard to this particular matter of rates surrendered

the right to alter the maximum charges. The language used was regarded as a mere delegation of authority by the legislature to the company to make those charges until the authority was altered or withdrawn. In other words, that the language did not constitute a contract or agreement between the parties, the legislature and the railroad company.

In the case at bar, however, the rates are fixed under the provisions of a statute which declares that they shall be so fixed by agreement between the parties. The ordinance of 1879 adopts that of 1862 and reaffirms it. The rate of fare therein provided is made a rate under the ordinance of 1879, and that ordinance was adopted while the Street-railway Act was in force, and which specially provided for an agreement as to rates of fare, and the provisions of that act were transferred to the companies organized under the Tram-railway Act. It may very well be that language used by a legislature in merely conferring authority upon a company to fix certain charges for fare might not be regarded as amounting to a contract, when the same language used by parties in fixing rates under a legislative authority and direction to agree upon them, would be regarded as forming a contract because the statute provided specially for that mode of determining them. Under such direction, we are of opinion the language used in the ordinances amounts to an agreement, for that is the way in which the rates are to be arrived at, and the reaffirmation of the previous language, by reaffirming and adopting the ordinance of 1862, by the ordinance of 1879, and its acceptance, constitute an agreement as of that time. The same as to the ordinances relative to the other roads. The rate of fare having been fixed by positive agreement under the expressed legislative authority, the subject is not open to alteration thereafter by the common council alone, under the right to prescribe from time to time the rules and regulations for the running and operation of the road.

Nor does the language of the ordinance, which provides that the rate of fare for one passenger shall not be more than five cents, give any right to the city to reduce it below the rate of five cents established by the company. It is a contract which gives the company the right to charge a rate of fare up to the sum of five cents for a single passenger, and leaves no power with the city to reduce it without the consent of the company. The language of section 20 in the Street-railway Act of 1867, which provides that the rate of fare agreed upon shall not be increased without the consent of the city authorities, does not mean that the rate may be reduced without the consent of the railway companies, nor does it show the parties did not suppose there was a contract between them as to rates. That provision does not seem to perform any material function, because without it, the parties having agreed upon the subject of rates, it would follow that the agreement could not be altered by either party without the consent of

the other. It may be that it was meant that the company, while unable to increase the rates of fare without the consent of the city authorities, had the right to reduce the rates as it might please without consulting the city.

It was probably inserted from abundant caution, but in no event can it properly or fairly be regarded as an implied permission to the city authorities to reduce the rates of fare as agreed upon without the consent of the railway company. The reasons are obvious and need not be restated.

It is said, however, that section 34 of the Tram-railway Act was amended some twenty-two days after the passage of the Street-railway Act containing the above sections 20 and 29, and that, therefore, the provisions of the amended Tram-railway Act must apply exclusively.

The amendment made to section 34 of the latter act in 1867 has been set forth in the statement of facts above made, but for convenience will be repeated here, as follows:

"Provided further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the streets in such consent and grant named pursuant to the terms thereof."

Referring to this amendment, it is argued that the city had the right to pass these ordinances of 1899 as a regulation and condition for the operation of the road, unless the rights or franchises already granted to the company should thereby be destroyed or unreasonably impaired, or unless the company would be thereby deprived of the right of constructing, maintaining and operating its railway pursuant to the terms of the original consent, and such impairment is not alleged in the complainant's bill. It is obvious that the additions to the original Tram-railway Act made in 1861 and 1867 were laws *in pari materia* with the Street-railway Act passed in 1867, and should therefore be construed together to obtain the legislative meaning.

Bearing in mind the provision of section 29 of the Street-railway Act, granting to other corporations the same powers as are given to the companies organized under that act, and coming to a consideration of the amendment to section 34 of the Tram-railway Act made in 1867, we find no inconsistency or contradiction between the two acts. The amendment to the thirty-fourth section prohibited the city from making any regulations or conditions whereby the rights or franchises of the company should be destroyed or unreasonably impaired, or whereby it should be deprived of the right of constructing, maintaining and operating its railway pursuant to the terms of the consent, while section 20 of the Street-railway Act provided in terms for an agreement between the parties upon the question of

rates of fare, and the parties having fixed such rate by agreement, entered into by authority of the legislature, there can be no question of its binding force. Section 14 of the same act also safeguarded the rights of the companies, and that section might be referred to in aid of its rights, by the company. The Tram-railway Act amendment of 1867 is a general provision regarding regulations or conditions, destroying or unreasonably impairing rights or franchises already granted, or depriving the company of rights of construction and operation, and should be construed also in connection with section 14 of the Street Railway Act, while the matter of rates of fare is specially provided for by section 20 of the last named act, which provides for an agreement on that subject. The two acts are entirely harmonious and may be fully carried out so as to involve neither incongruity nor inconsistency.

But the defendants raise the objection that section 29 of the Street-railway Act cannot be applied to companies formed under any other act for the reason that to apply it to such companies would violate the State constitution, section 20 of article 4, which provides that "no law shall embrace more than one object which shall be expressed in its title."

The title of the Street-railway Act is "An act to provide for the formation of street railways," and the claim is made that the provision of section 29, making the act applicable to other companies, is outside and beyond the object of the act as expressed in its title.

The meaning to be given to the constitutional provision was stated in *People ex rel. Secretary of State* v. *State Insurance Company*, (19 Mich. 392,) wherein Chief Justice Cooley, at page 398, said:

"We must give the constitutional provision a reasonable construction and effect. The constitution requires no law to embrace more than one object, which shall be expressed in its title. Now, the object may be very comprehensive and still be without objection, and the one before us is of that character. But it is by no means essential that every end and means necessary or convenient for the accomplishment of the general object should be either referred to or necessarily indicated by the title. All that can reasonably be required is that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection."

Similar provisions are to be found in the constitutions of several of the States, among them that of New Jersey, and the meaning of such provision was brought before this court in *Montclair* v. *Ramsdell*, (107 U. S. 147,) and it was held that the provision did not require a detailed statement or index or abstract of its contents in the title of an act, and that it did not prevent uniting, in the same act, numerous provisions for one general object fairly indicated by its title.

The constitution of Illinois contains a similar provision, the construction of which also came before this court in *Jonesboro City* v. *Cairo &c.*

Railway Company, (110 U. S. 192, 198.) In that case this court said, through Mr. Justice Harlan:

"The title of the act is 'An act to amend the charter of the Cairo and St. Louis Railroad Company.' The contention is, that the legalization of an election previously held, and at which the people voted in favor of a subscription of stock to that company, and the granting of authority to issue bonds in payment of such subscription, is not a subject expressed by the title of the act. In this view we do not concur, and our conclusion is justified by the later decisions of the Supreme Court of Illinois construing a similar provision in the State constitution of 1870. It was held in *Johnson* v. *People,* (83 Ill. 431,) that the constitution does not require that the subject of the bill must be specifically and exactly expressed in the title; hence we conclude that any expression in the title which calls attention to the subject of the bill, although in general terms, is all that is required."

We have examined the various cases cited by counsel for the defendants, arising in the State of Michigan under the constitutional provision in question, and it is sufficient to say that we think not one of them extends that provision so as to embrace a case like the one at bar. Narrowly considered, an act to provide for the formation of street railway companies should contain nothing but provisions relating to their formation and organization, but it would be absurd to hold that the constitutional provision would prevent the introduction into such an act of various details in regard to the corporations after their formation and in regard to their government, operation, regulation and other matters which might be fairly considered as germane to the particular object named in the title of the statute, and hence, we think it would be a most narrow construction of the constitutional provision to hold that under such a title it was incompetent for the legislature to provide that the benefits and obligations conferred and provided for in the act should be made applicable to corporations of a like character already organized and in operation. It is germane and appropriate to the subject-matter of the act, and to enact under such a title that all companies of the like nature should have the same privileges is fairly within the general object described in the title. This being true, the companies organized under the Tram-railway Act were equally, with those organized under the Street-railway act, enabled by the express authority of the legislature to enter into a contract for a rate of fare with the city, and when in 1879 and the subsequent years those companies which were organized under the Tram-railway Act entered into further agreements with the city in the way of ordinances, those agreements were valid so far as the objections heretofore considered are concerned, and not subject, in regard to this matter, to alteration at the will of one party only. The agreements being valid in the case of companies organized under the Tram-railway Act, it follows that those entered into with the other companies organized under the Street-railway Act were also valid.

Still another objection is raised by the defendants to the validity of the ordinances passed in 1879 and 1880 and 1885, by which the powers and privileges conferred and the obligations imposed upon the railway companies by the former ordinances were extended and limited to thirty years from the date of the supplemental ordinances, the objection being that the extending of the term of the consents beyond the then limit of the corporate life of the companies was illegal and void. We are not of that opinion.

This was matter of agreement between the parties. The franchise to be a corporation came from the State, and all that the company required from the city was its consent to the laying down of the rails and the operation of the road through the streets of the city, and such consent was to be given upon terms and conditions to be agreed on. This consent, when given, became a privilege or franchise granted to the corporation, and was property belonging to it. By the ordinance of 1879 the duties and obligations of the company therein mentioned were largely increased, additional taxes were provided for, and also extensions of its tracks as stated in the ordinance. The company also agreed to furnish all the materials and do all the paving mentioned at its own expense. One inducement to the company to agree upon and accept this ordinance was that the term which the city had originally consented to for the use of its streets by the company should be extended to thirty years from the date of the new ordinance. Although the company itself, by the act under which it was incorporated, was limited in its corporate life to a term of thirty years from the date of its organization in 1862, the extension of the term of consent by the city carried such consent about sixteen years beyond its then corporate life. Of course, no one contends that this extension of the term for the use of the streets of the city in any manner affected the limit of the term of the corporate life of the company, but the limitation of its life did not prevent it from taking franchises or other property, the title to which would not expire with the corporation itself. A corporation whose corporate existence was limited to a term of years could always purchase the fee in property which it needed for the operation of its business. If at the end of its term its life were not extended, the property which it owned was an asset payable to the shareholders after the payment of its debts, and in a case like the present, where the consent was assignable and transferable, particularly by virtue of section 15 of the Street-railway Act above set forth, any company itself having corporate existence for that purpose, could purchase the outstanding term and operate its road thereunder. We see no reason why the company could not take the extended term as provided for in the ordinance, and it formed a good consideration for the agreement on the part of the company to perform the other obligations contained in the ordinance. This exact proposition has been determined

by the Circuit Court of Appeals for the Sixth Circuit in *Detroit Citizens' Street Railway Company & others* v. *City of Detroit*, (12 C. C. A. 365; same case, 64 Fed. Rep. 628.) In the course of the opinion of the court in that case, the cases of *People* v. *O'Brien*, (111 N. Y. 1,) and *Minor* v. *Central Railroad Company*, (123 N. Y. 242,) were cited. *People* v. *O'Brien* is one of the leading cases in New York upon that subject, and it was there held that a corporation, although created for a limited period, might acquire title in fee to property necessary for its use, and where the grant to a corporation of the franchise to construct and operate its road in the streets of a city is not, by its terms, limited and revocable, the grant is in fee, vesting the grantee with an interest in the street in perpetuity to the extent necessary for a street railroad; the rights granted to be exercised by the corporation or whomsoever may lawfully succeed to such rights. In that case the authorities show that a franchise of the above nature is invested with the character of property and is transferable as such, independently of the life of the original corporation. The other case, in 123 N. Y., announces the same doctrine. It is not a new one, and the decisions have all been one way, in favor of the right of a corporation, limited as to the time of its corporate existence, to purchase or acquire by agreement or condemnation property for its use, the title to which it might own in fee.

The case above cited in the Circuit Court of Appeals for the Sixth Circuit, it will be noticed, is between the same parties as the case at bar, and if the judgment therein had been pleaded or put in evidence upon the trial of this action, we cannot now see why it would not have been *res adjudicata* between the parties in this suit upon that question, at least as to the particular road then under discussion.

In *City of Detroit* v. *Ellis, Attorney General*, (103 Mich. 612,) upon an application for a mandamus the decision of the United States Circuit Court of Appeals was regarded as *res adjudicata* of the question in issue in that suit on an application by the city and certain individual citizens for a mandamus to compel the attorney general to file an information in the nature of *quo warranto* to inquire by what right the railway company maintained and used its tracks in the streets after the date named. Without treating the case in the Circuit Court of Appeals as strictly *res adjudicata*, we regard the conclusion arrived at by that court upon the question under discussion as correct, and consequently the objection now urged by the defendants to the validity of the ordinance of 1879 and the other ordinances similar to it cannot be maintained.

The further objection is made that under the power of alteration and repeal, provided for in the constitution of Michigan and under the terms of the various ordinances giving power to the common council in certain cases to provide for further rules and regulations, the right is reserved to the common council to alter the rates of fare provided for in the various

ordinances under consideration, as it alone may regard reasonable and just, without the consent of the company.

The constitution of the State of Michigan, article 15, section 1, provides: "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed." Counsel for the defendants contends "that the regulation of rates of fare or toll upon the street railway is a governmental function, delegated by the legislature of the State of Michigan to the municipalities, and no matter in what form such delegation of power may be exercised, whether by ordinance or an assumed contract, it is nevertheless a law, subject to alteration, amendment or repeal. It has not been the policy of the State of Michigan since the adoption of the present constitution to permit irrevocable legislation. The State cannot do it itself, and if it cannot, surely one of its creatures, like a city, cannot be permitted to do that which its creator is prohibited from doing."

We have already seen that the legislature was competent to grant to the city of Detroit the right to give its consent to the laying of the tracks of a street railway and the operation of the same in and through its streets upon such terms and conditions as the parties might agree upon. The grant of this power was not the formation of a municipal corporation, directly or indirectly, either in substance or effect. The legislative act which granted the power to the city could not be altered, amended or repealed by the latter. No such power was given to it by the legislature and probably could not even be delegated in any event. It is sufficient to say that none was attempted. (*City Railway Company* v. *Citizens' Railway Company*, 166 U. S. 557, 563.)

The legislature has not attempted to interfere with the rights of the street railway companies in Detroit, and hence the extent of its power so to do is not involved in this case.

We are then brought to the question of the reservations in the ordinances themselves. An examination of them leads us to the conclusion that not one provided or was intended to provide for a power to alter an agreement in relation to the rates of fare entered into between the parties. The right from time to time to make such further rules, orders or regulations as to the common council may seem proper, cannot be held to extend to the alteration of a contract as to the rate of fare which shall be charged for the transportation of passengers. We think, as was stated by the court below, that this reservation permitted the city to make further rules or regulations than those contained in the ordinances, in regard "to all matters incident to the construction and operation of the road, such as the location of the tracks in the streets, the placing of switches and turntables, the repair of the pavement between the tracks, the removal or limitation of the number of tracks, in the

interest of public travel, the frequency with which cars should be run for the public convenience, the stopping of cars at street crossings, the use of fenders, the rate of speed to be maintained, the sale of tickets, and generally to details of the conduct and operation of the railway, which experience might show to be necessary, in addition to or in amendment of those specified in the consent, for the protection of life, the accommodation of the public, and the avoidance of injury to private property. Such regulations are not invasions of the contract rights of the company and are just and reasonable." (*Lake Shore & Michigan Southern Railway Company* v. *Ohio*, 173 U. S. 285, 305.)

The fixing of rates is, as we have already said, among the most vital portions of the agreement between the parties contained in the ordinances. It cannot be supposed for one moment, with regard to a right so fundamental in its nature, that there was any intention to permit the common council in its discretion to thereafter make an alteration which might be fatal to the pecuniary success of the company. For the reasons already given, we think the language used does not, in fact, give any such power to the common council. The ordinances of 1899 are, so far as this record shows, the first wherein the common council has assumed to make any change in the rates of fare without the assent of the company to be affected thereby. From 1862 until 1899 there seems to have been no attempt to exercise this alleged power of alteration by the common council without the consent of the railway company. While the rate of fare existed as agreed upon between the city and the railway company, expenditures involving millions of dollars were entered upon, changing the mode of transportation from animal to electric power, and no claim seems ever to have been made on the part of the city of a right of alteration to be exercised in accordance only with its own views of reason and propriety. This in itself is a strong implication of the want of any such power under the various reservations set forth in the foregoing statement of facts and contained in the ordinances specified. But aside from that and considering only the nature of the right itself growing out of the agreement as to fares, we are of the opinion that not one of the reservations of the right to make further rules or regulations could by any fair construction be held to include the right on the part of the city at its own pleasure to reduce the rates of fare agreed upon in those ordinances.

We have thus answered the chief objections of the city to the maintenance of this action. Some others have been made, which we have examined, but do not think it necessary to further refer to them than to say they are in our opinion not well founded.

We think the conclusions arrived at by the court below are correct, and its judgment is, therefore,

Affirmed.